

**U.S. INTELLIGENCE AGENCIES AND ACTIVITIES:
COMMITTEE PROCEEDINGS**

**PROCEEDINGS
OF THE
SELECT COMMITTEE ON INTELLIGENCE
U.S. HOUSE OF REPRESENTATIVES
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FIRST SESSION**

**SEPTEMBER 10, 29, OCTOBER 1, NOVEMBER 4, 6, 13, 14,
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U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

WEDNESDAY, SEPTEMBER 10, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 11 a.m., in room 2222, Rayburn House Office Building, the Honorable Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Stanton, Dellums, Murphy, Aspin, Hayes, Lehman, Treen, and Johnson.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, counsel.

Chairman PIKE. This meeting was called to make policy decisions. Senator Church and I have discussed this and agreed not to hold hearings on the same subjects. We also agreed that the most useful thing we could do would be to go from the cost of intelligence-gathering operations all the way to the other end of the spectrum—the results of our intelligence-gathering operations.

We decided that the best way to look at the end results of intelligence-gathering operations was to examine certain situations which have already taken place. You may recall, I asked for input from the committee as to which particular situations we would look at, and we have, at least for the time being, chosen four: The Tet offensive, the Arab-Israeli war of 1973, the invasion of Cyprus by the Turks and the coup in Portugal. We propose to look at what the intelligence community was saying about each of those particular situations immediately before the events took place.

In the final analysis, our intelligence may be worth a certain amount of money if results are good and a lesser amount if they are poor. You can't evaluate without looking at results.

We have tried to make very clear to the intelligence community precisely what we are going to do, so there would be no question about where we are going next. We asked for certain information. We wrote letters. I concede that our requests were much broader than what we needed, simply because we did not know the names of particular documents which we were seeking. It has been difficult. We received a response to my letter of August 17 only yesterday.

What we asked for is this: We wanted the briefings which were given to the President during the week before each of these occurrences. It is a very simple and limited request. Mr. Colby referred to these documents when he testified before us—the briefing given to the President, called the President's briefing document and referred

to as the PBD, the specific report of the Watch Committee and Central Intelligence bulletin. Without running down the list, what we want are the top level analyses put out by each of the intelligence agencies for the use of the policymakers in the week before each of these events occurred.

In fairness to the intelligence community, we are getting some of the information. But we have not by any means begun to get all of it, and the information we have received is not specifically what we requested. We want the original pieces of paper disseminated, for without them we are unable to make an objective evaluation.

I have convened this meeting this morning to request that the committee authorize me to issue subpoenas—there would probably be four or five addressed to the CIA, DCI, NSA, et cetera—for those pieces of paper.

In fairness to the executive branch, I have just met with Jack Marsh of the White House and he suggests the committee authorize but withhold serving the subpoenas until 2 p.m. today and they will try to get the pieces of paper to us prior to that time. I have assured him we will do that. I don't enjoy having these subpoenas served, but I will not put up with not getting the necessary information.

[COMMITTEE NOTE.—The subpoenas referred to in all of the proceedings are printed on pp. 1469-1494 of the appendixes.]

Mr. TREEN. Are you going to propose a special motion?

Chairman PIKE. I would simply ask that Mr. Stanton move that the chairman be authorized to issue subpoenas for the end products of the intelligence community, to be complied with within 1 week following the date of the subpoena.

Mr. TREEN. You indicated you wanted the original papers—the papers actually given to the President in these instances; is that correct? Is it your intention the subpoena would result in our getting the copy lodged at the White House?

Chairman PIKE. I would be happy with a copy.

Mr. TREEN. You want the end product for the President and the next level below, and all of the documentation leading up to that?

Chairman PIKE. I am not asking for all working papers leading up to that—I want the end products.

Mr. TREEN. By the "end product," do you mean having something leave a desk is the end product?

Chairman PIKE. There is going to be a little discretion left with the Chair as to the language of the subpoena.

We are now after material requested back on August 17. Learning some of the words of the art and the manner in which the executive branch works is a specific art in itself.

Mr. TREEN. I agree you need some discretion; but we don't have the actual subpoenas before us, and I for one will vote present in the absence of the actual subpoenas.

Chairman PIKE. I, myself, would prefer to have the actual subpoenas, but this meeting was called in a hurry just for this purpose.

Mr. TREEN. Is it the intention of the Chair that subpoenas would be returned to the committee in closed or open session?

Chairman PIKE. They would be returned to the committee. The hearings in the future will start in open session and they may be closed from time to time.

Mr. TREEN. The subpoenas are returnable to the committee and they will be delivered to you or Mr. Field. And, they will be kept under our tightest security until the committee decides if they should be released. Has anything been refused?

Chairman PIKE. Here is what we run into—and Senator Church said we would run into this: Nothing is ever refused; things are just not delivered. They very carefully do not refuse and their language is always the language of cooperation; but the fact is the fact of non-production. That may be too strong; we do get some information.

Mr. TREEN. Has the chairman received any information from the intelligence community that complains it would be damaging to national security?

Chairman PIKE. I don't think they ever claimed that giving the committee information would be damaging to national security. Mr. Stanton?

Mr. STANTON. I move that the chairman be empowered to issue subpoenas dealing with the Arab-Israeli war, the Greek-Cyprus invasion, the coup in Portugal, and the Tet offensive, and the briefing papers for the President and those below him, be sent.

Mr. MURPHY. This is the first information that other members of the committee and I have received since we returned. I would hope that, in the future, members of this committee are advised of all committee action. We don't have to sit in on your discussions with Senator Church, but I would like to make a request that the members be brought up to date and told what we are asking for.

Chairman PIKE. First of all, as a matter of procedure, the manner you suggest is infinitely preferred. It has been the intention of the Chair not to have a meeting such as this, but we can't hold the hearings we have planned without the data.

My choice would be to have an executive session and discuss this with the members of the committee, but I have already announced I am going to hold open sessions as often as possible.

Mr. TREEN. I want to concur in the remarks of Mr. Murphy, and I don't want to delay the activity of the committee; but we are getting into some extremely important subjects, and I assume they are for the purpose of the actions taken by the President or others of authority but that we are ineffective in getting the analyses, et cetera. At the same time, I think we should let the executive branch have the opportunity to respond without the subpoenas but have the chairman address a letter to the departments concerned specifically requesting this information.

Chairman PIKE. That step has already been taken. I have written every letter I know how to phrase. They didn't respond to letters written in general terms, so how do we get specific?

Mr. TREEN. You have done that under your signature? I did not understand that.

Chairman PIKE. The letters which I wrote are quite general and we will certainly show them to you.

Mr. TREEN. I will vote present on the motion, but I think it has been handled on a rush basis and without the opportunity to get responses from persons who could indicate what the dangers and risks are.

Chairman PIKE. In one case, I wrote a letter as early as August 17 under my signature and we just got a response yesterday.

Mr. DELLUMS. With respect to the other information we received, which was requested before the recess—where we asked precise questions—is that available?

Chairman PIKE. We are getting some information. I cannot make any effort to quantify it. We do have a good library downstairs. Most of the members have already taken advantage of it to look at information which has been delivered. What has not been delivered, I cannot tell you about in detail.

We will now vote on the authorization of the subpoenas.

[The roll was called as follows:]

The CLERK. Mr. Giaimo?

[No response.]

The CLERK. Mr. McClory?

[No response.]

The CLERK. Mr. Stanton?

Mr. STANTON. Yes.

The CLERK. Mr. Treen?

Mr. TREEN. Present.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Yes.

The CLERK. Mr. Kasten?

[No response.]

The CLERK. Mr. Murphy?

Mr. MURPHY. Yes.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Yes.

The CLERK. Mr. Aspin?

Mr. ASPIN. Yes.

The CLERK. Mr. Milford?

[No response.]

The CLERK. Mr. Hayes?

Mr. HAYES. Yes.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Yes.

The CLERK. Mr. Pike?

Chairman PIKE. Yes.

The CLERK. Seven yeas, four absent, and Mr. Treen votes present.

[Whereupon, at 11:45 a.m., the committee adjourned.]

U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

MONDAY, SEPTEMBER 29, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2118, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaino, Stanton, Dellums, Murphy, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, counsel.

Chairman PIKE. The committee will come to order.

What I would like to do at this particular point is announce first of all that Mr. McClory and I are in full agreement that it was the Redskins who won the football game yesterday and not the Giants.

I would like to go on now and bring all of the members of the committee up to date on where we stand in relation to the executive branch as far as the production of documents for this committee is concerned.

Some of you may be aware that I have given my personal views on a reasonable compromise as to the release of information in our possession to the public, but that is not the issue with which we are today confronted.

We are today confronted with the fact that we have subpoenaed information but have not received that information. We have also requested a great deal of information which we have not subpoenaed and we have not received that information.

Mr. Field, how do you want to brief the committee at this particular time?

Mr. FIELD. Mr. Chairman, I think it might be best if we start off with Mr. Donner describing the proposal put forward to the committee staff by the executive branch and then I can comment on what it would do to the investigation as we go through each phase or part of that proposal.

Chairman PIKE. Mr. McClory?

Mr. MCCLORY. I met with the President last Wednesday, along with the Republican leadership, and urged that all of the intelligence agencies provide the kind of cooperation with this committee which I feel is necessary, and do what is essential in order to avoid a confrontation.

Then you and I, together with the Speaker, John Rhodes, Mr. Kissinger, Jack Marsh, Don Rumsfeld, and I guess there were several others, met with the President Friday morning in the Oval Office. We

did discuss a mechanism for resolving the differences which the committee has with the executive branch.

At the conclusion of our meeting, we designated counsel to try to put into some kind of form a new procedure, elaborating on the procedure the committee had already adopted, which would, hopefully, avoid a confrontation with the executive branch insofar as the work of this committee is concerned.

It has been my hope that our counsel and the counsel for the President—I guess actually counsel for the Secretary of State—could resolve these problems. As I understand it, there has been substantial progress along that line. I assume that the report we are going to receive now is our counsel's report on those discussions—the areas of agreement, the areas of disagreement, and what it looks like as far as a procedure which can avoid further proceedings is concerned—either in the House, the courts, or whatever.

Chairman PIKE. I disagree with absolutely nothing that you said with the exception of the conclusions that you derived therefrom; that is, that you detect a great motion on their part. You see agreements which I find it difficult to discern. I think the only way we can go at this is to have our counsel review what the situation is.

Your representative was, as I understand it, present at all of these sessions. We were delighted to have him there because I don't want there to be any question about this being a partisan problem. If your representative at any point disagrees with the presentation made by our counsel, I hope you will feel free to say so.

Go ahead, Mr. Donner.

Mr. DONNER. As a direct result of your meeting at the White House, Mr. Chairman and Mr. McClory, we were contacted by Mr. Rogovin, who is, I believe, counsel to Mr. Colby, to arrange a meeting. At the same time, we were contacted by a Mr. Duval, who I understand is a counsel at the White House, and a meeting was arranged for approximately 2 o'clock Friday afternoon at the offices of the staff of the select committee in this building.

There were present at this meeting Mr. John Marsh, who is an assistant to the President, Mr. Rogovin, who as I said is counsel to Mr. Colby, Mr. Mike Duval, who is associated with Mr. Marsh, Lawrence Eagleburger of the State Department, Mr. Monroe Leigh, who is a counsel to the State Department, Mr. Ahearn, and myself.

At this meeting we were presented with a discussion draft which I believe is before you at this time, sir.

Chairman PIKE. It is.

Mr. DONNER. This meeting was between a committee of the House—the legislative branch of the Government—and the executive branch, notwithstanding the personnel that were there.

Chairman PIKE. In other words, you felt a little bit outnumbered?

Mr. DONNER. Mr. Chairman, it is also important to establish that there is not another branch of Government in addition to the judicial, executive, and legislative branches.

At that meeting we were presented with this discussion draft. At the outset, just as a minor point, I draw the committee's attention to where the following "narrow" exceptions were deleted. We felt the exceptions were fairly broad. A discussion proceeded almost on a line-by-line basis.

Chairman PIKE. You are now talking about that part of the document which refers to materials to be supplied.

Mr. DONNER. That is correct.

Let me read the first paragraph.

Provided the committee agrees to publication procedures as set out below, the executive branch will supply intelligence-related materials requested with the following narrow exceptions.

It is that word "narrow" that was objected to.

In the following lines we dealt first, obviously, with the question of identities of secret agents. Mr. Field will comment later on this, but there was an objection made to "sources and persons and organizations involved in operations." We thought this was an incredibly broad term and required further definition.

At the outset, it was agreed to first review the memorandum in total to see if we could go back on a line-by-line basis and come to a written agreement.

We addressed almost every word in this first paragraph.

"Reprisals" was a questionable word.

By the way, the words "if disclosed," I think, deserve a great deal of comment because they reflected adversely on the committee and the staff in the sense that it—

Chairman PIKE. We are not now discussing the question of releasing these items to the public; we are now discussing the question of releasing these documents to the committee. Is that correct?

Mr. DONNER. It is not clear.

Mr. McCLORY. Mr. Chairman, may I inquire? We are talking about the identities of secret agents, sources, and persons—"sources" I suppose could include informants and other sources—which, if disclosed, would subject them to personal physical danger.

It was my understanding that we never wanted to receive, even in classified form, the identities of agents.

Chairman PIKE. Mr. Field, why don't you address yourself to that?

Mr. FIELD. This is one of those areas we have spent a tremendous amount of time on since the investigation began. When this kind of thing is presented to you in the abstract, it always seems very reasonable. They always use the example of the secret agent in Moscow; you wouldn't want to know his name because he might be endangered, and that sounds eminently reasonable. The problem is, we are not looking into agents in Moscow. As the committee knows, we are looking, for example, into the record of predicting events: The Mideast war, Cyprus, Portugal.

In those cases, time and again we have come across situations where a clandestine agent would give a report which was ignored—in one case because it was extremely good and extremely detailed.

We asked for the identity of that agent. We were given that information. We asked for a background on him. We asked for prior experiences he had had with the intelligence community. We were given those. They were very, very helpful in leading us to the conclusion that the reason that report was ignored was not because of its content or quality; it was due to a competing political problem.

We pursued that angle and we confirmed it.

In another example in the Mideast, or in the Mediterranean area, without identifying which one of the three areas—

Mr. GIAIMO. Can you explain a little more clearly to me what you mean by a competing political problem?

Mr. FIELD. One of the problems comes about when you have a very good intelligence report, like the one I referred to, and you are trying to determine why intelligence doesn't function. In this case, that is what we were looking at. We found that the foreign policy element of this particular crisis was so strong that it overruled a very good and very substantial intelligence source.

Mr. GIAIMO. Are you telling me that the intelligence estimates indicate one factor and that people in the Government, for whatever reasons, are suggesting that they change their intelligence reports to fit certain political motives?

Mr. FIELD. To be specific, in this example the intelligence was not disseminated. It was not disseminated, we feel, because it conflicted with a policy held elsewhere in the Government. We are now concerned with the fact that somebody, because of a policy consideration, could prevent intelligence from going to legitimate users of intelligence.

It is the type of example where it was important for us to get the identity and the quality of the agent involved.

Mr. McCLORY. I want to inquire: It seemed to me the information which was being furnished would be important, but the identity or the means by which we could identify the secret agents would not be essential even if we described the quality of the person—

Mr. FIELD. We are in open session and I can't give you the identity now; but if I could, I think you would see that with the identity we had in that case it is incredible that that report was not disseminated.

Mr. McCLORY. The further qualifications in this exception would be if the identity was disclosed, or if it was made known, this person would be subject to physical danger. We certainly don't want to subject anybody to physical danger.

Mr. FIELD. I am not suggesting we identify him. In fact, I have just refused to publicly identify him. I would not do that.

Chairman PIKE. Mr. McClory, we are not on the question of publicizing. We are on the issue of what information is going to be made available to this committee.

Mr. FIELD. Mr. McClory, let me give you another example of where an identity is extremely important. In another crisis in that area of the world, we had a situation where a clandestine agent's report came in and was given tremendous credence—well beyond masses of other intelligence coming in indicating the opposite. We were confused by this. We couldn't understand why that one report was given so much credibility. So we asked who the agent was. We found out who it was. We were told this. We were given his identity.

We went further into it and found out that the person or source was new and untested. He had never been used before and, in fact, had a definite bias, due to his role in other activities. That again raised the question: why was this report, based on that kind of agent, given so much weight. We suspect again there were political—I used the word "political" with a small "p"—considerations involved.

As we probed further, it appeared that the reason that report was given so much credibility was that it served other purposes to have that information given tremendous weight. It has been a very important part of our investigation of that particular crisis.

I would also point out that what we are talking of here are not just secret agents, but organizations. That includes CIA proprietaries. We have looked at the proprietaries. We first looked at them in crypto number form: A-1, A-2, A-3, A-4, and we found certain of the proprietaries raised questions. We went back, as to those proprietaries, and said: "Now that we have a reasonable belief and a good cause to see them, and we can demonstrate our good cause, we would like the names."

We have been given the names and I have personally interviewed the presidents of some of these proprietaries. It has been helpful to us. I hope at some point we will be able to go to hearings on this particular issue.

All I can say is if we were to accept this I would have to say in all candor that it would completely shut down this investigation.

Mr. McCLOXY. Mr. Chairman, could I make this further point. As I understand it the committee was represented at this conference by Mr. Donner. Mr. Field, you were not at the meeting, so what you are saying to us now is something of which you do not have, firsthand knowledge.

Chairman PIKE. What he is saying now is that if we accepted the language of the President's proposal, it would completely shut down the committee. The language is there.

Mr. JOHNSON. What Mr. Field has given us is his conclusion, and I think on a matter of this importance we must eventually go into the details of what he has said. If that means we have to go into executive session, I am sorry, but it seems to me that is the only way that we can go because regardless of our feelings of his competence and judgment, we cannot accept his judgment on this matter; we must evaluate all of these things ourselves.

Chairman PIKE. I agree with you completely.

All I am seeking to do at the moment, Mr. Johnson, is brief all of the members of the committee as to where we are in our efforts to get documents and information from the executive branch of the Government.

Mr. JOHNSON. Before we take a final vote on this matter, do I assume correctly that we will go into executive session and receive this information in more detail?

Chairman PIKE. I am not sure I can say that is going to happen. We always vote on whether we go into executive session or not. The motion can be made at any time and we will do that which the committee votes to do.

Go ahead, Mr. Donner.

Mr. DONNER. If the chairman will indulge me, I will read the entire first paragraph. This relates again to material that would be supplied except—and this is an exception:

1. Identities of secret agents, sources and persons and organizations involved in operations which, if disclosed, would be subject to personal physical danger, or to extreme harassment, or to economic or other reprisals, as well as material provided confidentially by cooperating foreign intelligence services, diplomatic

exchanges or other material the disclosure of which would be embarrassing to foreign governments and damaging to the foreign relations of the United States; and

2. Specific details of sensitive intelligence methods and techniques of collection.

These exceptions will not be used to withhold materials concerning alleged impropriety by an executive agency or alleged criminal activity. Such materials will be furnished under arrangements appropriate to the particular situation.

Verification procedures will continue to be available in case of committee questions concerning matters deleted by the executive agency.

Other matters, the complete confidentiality of which the President personally certifies is essential to the effective discharge of Presidential powers, may be withheld.

Mr. McCLODY. With respect to these sensitive and delicate matters which the Executive feels should not be considered by the committee, and that the committee would want to consider in connection with our investigation, there would be an opportunity for some kind of verification—as to whether or not these sensitive characteristics were involved.

I think the proposal was, Mr. Chairman, that you and I would have the responsibility of determining whether or not these exceptions were present. I am not saying there was no agreement on that or anything, but there was an agreement that there would be an opportunity for verification.

Chairman PIKE. The gentleman is absolutely correct and I have two problems with that verification situation.

We have had this situation time and time again in the House of Representatives where the members of a committee and the Members of the House are asked to trust the discretion of the chairman, or the chairman and the ranking member.

I have a great problem with the concept that I should be privy to information which is withheld from the rest of the committee. That is No. 1.

No. 2 is—and I specifically asked Mr. Donner about this—let us assume that you and I agree that these documents should not be withheld from the committee. The question is: Does the committee get them or not? And the answer is, if you and I agree that the committee should get them, the committee would not get them.

Mr. McCLODY. I wouldn't agree with you on that, Mr. Chairman. I would say if we verified the fact that these exceptions were not involved, that the committee would get them. Then we would come under the next part of the—

Chairman PIKE. That is not what the White House said in the negotiations. You see, this is where you and I have come to different conclusions.

Mr. McCLODY. I think we are still at the stage where we are trying to work out rather detailed procedures.

Now, it is true that we previously worked out simplistic procedures which all of the members of the committee agreed upon insofar as publication of classified materials—

Chairman PIKE. No, no, no, no; you can't say all the members of the committee have agreed on it.

Mr. McCLODY. As I understood, the committee adopted procedures—

Chairman PIKE. I am trying to be fair to Mr. Treen right now.

Mr. McCLORY. The committee adopted procedures, or there was general agreement with regard to procedures, under which we received classified material and then decided to make it public.

Now, that gets us into another point which I guess will be taken up in a few minutes. I don't care for the responsibility for this kind of verification. But whatever mechanism is set up, if it were established that these exceptions did not apply, we would then receive the information and would make classified material public only following this next procedure which I guess Mr. Donner will speak to.

Chairman PIKE. You and I now find ourselves in agreement with one another, but in disagreement with the White House.

Mr. McCLORY. Well, I don't want to disagree with you on that. As a matter of fact, I am hopeful, Mr. Chairman, that you and I can continue to agree, insofar as this committee is concerned, so that we will be operating as a united committee, as a bipartisan committee, without any kind of dissension on the committee along partisan lines.

Let me say further that my entire effort in this project is to try to adopt procedures which will enable us to avoid litigation, or any other kind of a confrontation with the Executive insofar as the work of our committee in this investigation is concerned.

Chairman PIKE. I certainly share your hope, but I am afraid that my experience in relation to these negotiations in the past makes me not quite as optimistic as you are.

For example, just reading this draft of what would be provided to the committee, you always start with the situation of the secret agent in Moscow, but you wind up with organizations subject to economic or other reprisals. You wind up with persons subject to economic or other reprisals. And I frankly don't know what that means. I think that could be used by the executive branch to withhold—not from the public, but from this committee—almost anything it wanted to withhold.

Mr. McCLORY. Mr. Chairman, if you will permit me, it seems to me we can spell out what we want, what we want to acquiesce in as far as exceptions are concerned, and see that that is the procedure which is followed by the committee.

Chairman PIKE. Mr. McClory, we have done that, but we haven't gotten the information.

Mr. FIELD. If I could address myself to Mr. McClory's comment: As you have rightly pointed out, I am not as involved as others in the negotiations. My concern, and what I am trying to relate to the committee this morning, is the impact on our investigation of some of these proposals.

In our experience, it has been very difficult to come up with any kind of limitation because just when you think you have defined a reasonable area that nobody in the Congress would ever want to know about, you get part way into your investigation and you find that it is the one piece of information that you have got to have in order to put the picture together. This has happened to us a fair number of times.

I would say that in every one of these instances agents, sources, persons, or organizations were involved. I can cite examples in all of these areas where we have had to get information and we have consistently obtained that information up until now.

In the area of diplomatic exchanges, we have received information and it has been helpful.

One entire area of our investigation involves sensitive intelligence methods and techniques of collection.

As you will recall, NSA surveillance—which this committee went into early on—and the question of whether there had been telephonic interceptions is in that area. Under the terms of the White House proposal, we would not have been able to get into it.

What I am really saying is that if there are limitations on access in each of these areas, it would be impossible for us to proceed because I am afraid they would only be applied when we got to the critical point. As long as things were not critical, we would get the information, but we would get this limitation thrown back to us constantly whenever we got into something that might be embarrassing. And then our hands would be tied.

Mr. TREEX. In the publication section there is a method for trying to resolve a dispute—a congressional review board would be established, and the President would have some word. But if no agreement between the board and the President were reached, Congress could still litigate the matter.

Is there a similar procedure with reference to materials to be supplied? Is there a separate review procedure there, or does the same procedure apply to both?

Chairman PIKE. It does not.

I think that we have essentially three basic issues to be resolved: One is what information the committee itself is going to get—what documents and what witnesses.

The second is the so-called Eagleburger doctrine—what witnesses we are going to be able to ask what questions under what circumstances.

The third is the question of the release to the public of information which is in the committee's possession.

Now, I think I have said that I would be willing to accept what I thought was a reasonable proposal on the President's part as to the third issue, but today I think we are in a "Catch-22" situation. They are willing to be very reasonable on the subject of what we release to the public if they don't give us much to release to the public in the first place. I think that is where we are right now.

They are imposing restrictions on the information to be made available to this committee under which, it is my judgment, as it is that of Mr. Field, the committee simply couldn't operate.

Mr. TREEX. I am just wondering whether the procedure set forth with regard to publication might also be applied to the first section which is "materials to be supplied."

It seems to me if we agreed to this—and, parenthetically, I recognize the problem; I think we have from the outset—depending upon how far we want to go in our investigation and into an evaluation of intelligence operations, we sometimes have to get to the source.

On the other hand, simply by agreeing that we are not going to receive the names of agents where there would be physical danger harrassment, et cetera, doesn't mean we are agreeing to the decision by the Executive that providing us with the identity of a particular

agent would result in that, because I think we ourselves would also agree, as a standard for our conduct here, not to release it.

Chairman PIKE. If we agree to these procedures, they make the decision.

Mr. TREEN. I don't read that into it. It may be as a result of negotiations that that is what it means—that we are now and forever agreeing that they make the decision—but it seems to me if we just agree on the test, we can still quarrel about whether that test should be applied in given instances.

Chairman PIKE. Yes, but we are talking about what information is to be made available to this committee. If we don't have the pieces of paper, if we don't have the witnesses, we don't even know what we are arguing about with them.

Mr. TREEN. That is why I thought, Mr. Chairman, if the administration would go along with revealing the identity for the purpose then of setting up the process of making the final determination, that might help. In other words, they would then release the identity of that source with the understanding that this other review procedure, as set forth under the publication provisions, would then be involved if there were disagreement.

Chairman PIKE. In essence, what they are saying is, they are not going to give to this committee anything they don't want to have made public.

Mr. McCLORY. Mr. Chairman, I certainly don't want to agree with that broad statement.

Chairman PIKE. It is probably too broad. You are probably right.

Mr. GIAIMO. Will the chairman yield?

Chairman PIKE. Yes.

Mr. McCLORY. Were you recognizing me for a comment?

Chairman PIKE. I am. I am sorry.

Mr. McCLORY. The exception is qualified, as you pointed out and as Mr. Donner did in his recital. These exceptions would not apply with regard to any wrongdoing, illegal act or anything like that, and there would be an opportunity for verification. I would say this: If, as a result of that verification, the material is still needed, of course there would be an opportunity to subpoena this, or to bring this to the House for some action.

I would say this also: If we go to the House with the idea that we want to get the identities of secret agents, I will tell you, we face a real dilemma there because I don't think—

Mr. GIAIMO. Will you yield for a question?

Mr. McCLORY. I don't think there are going to be very many Americans or very many Members of the House who want the identities of secret agents disclosed.

Chairman PIKE. Well, I would agree with you in most circumstances. If I thought, however, that there was an agent who thought it would be a good idea if Congressman Pike were eliminated from the scene, I would want to know his identity. And I would also want to know his recommendation, even though he was only a middle-level agent.

Mr. Giaimo.

Mr. GIAIMO. I just wanted to get something clear in my mind. I am beginning to observe a minuet here, the steps of which I think I observed in some of the Watergate hearings last year.

The fact of the matter is, we didn't commit errors in judgment, or mistakes in intelligence, or improper and illegal acts in this committee. The fact is that some of the intelligence agencies apparently did. That is what we are trying to investigate. And, Mr. McClory, when you say they are willing to give us evidence of wrongdoing, how the devil do we even know what questions to ask unless they come forth with all kinds of information, unless they allow all kinds of people to testify, unless they give this committee whatever information our investigations require?

Do you object to their furnishing us information of any kind?

Please don't mention the spy in Moscow. Nobody wants to expose him.

Mr. McCLORY. I won't mention the spy in Moscow or anybody who has any ax to grind with the chairman of the committee. But I will say this: Within the hour we will have volumes of material as a result of the actions we have already taken, and we will have so much classified material under the protective procedures that we have advanced, that this committee will have plenty to do. Then, if there are things we still need, I am confident the committee can then take action to get them.

Mr. GIAIMO. Are you suggesting to me once again that the person who is charged with possible wrongdoing is going to be the person who is going to decide what evidence he submits?

Mr. McCLORY. No. What we are talking about is the cooperation of the President of the United States, his directions to the intelligence agencies to cooperate with this committee within what I would regard as very narrow limitations, and our opportunity to make public acts of wrongdoing, misjudgments, and all kinds of errors and mistakes that may have occurred. And, notwithstanding all of the good work that has been done by these agencies, we would have that assurance subject only to the personal obligation or responsibility of the President to certify that national security was involved with regard to some matter that we might want to make public.

I don't think that situation would ever arise, but the President is personally willing to put his own credibility on the line insofar as disclosure of any such material is concerned.

Now, I think that is a pretty valid procedure and certainly one which should encourage us to avoid the confrontation, which is the other alternative.

Chairman PIKE. Mr. Giaimo is recognized.

Mr. GIAIMO. I certainly don't want to see any confrontation, but when you say that the President of the United States can give us assurances, I am not so sure that will be binding on some of the intelligence agencies, and I cannot be reassured by you or anyone else that it will be binding upon them.

I am also of the opinion—and this isn't only a result of what has happened in the last few days—that intelligence agencies in this country will cooperate with committees of Congress when they feel that the committees are friendly to them, and they suddenly develop a desire not to cooperate when they feel the committee might be less than friendly.

Mr. McCLORY. If the gentleman will yield—

Mr. GLAIMO. I don't trust them to be very frank and honest and I think there is sufficient evidence to warrant Congress looking into some of these activities. It bothers me that in the face of our merely trying to find out what has been going on, and what inherent dangers there are, they are moving Heaven and Earth and even bringing the President in it to try to deprive us of needed information.

Mr. McCLORY. If the gentleman will yield, I don't know whether they are bringing the President in. I am trying to bring the President in, with the idea that the President can exert the most pressure and the most influence, to assure that the agencies do cooperate with this committee. I don't want to indicate that we are going to act against the intelligence agencies out of anger, as the gentleman indicates; but I do want to indicate that we want their cooperation in providing us with all the facts we require in order to fulfill our mandate.

But let me just add this: If the President's certification to this committee does not satisfy members of the committee, we can proceed through whatever means we want to to get information that even the President says we should not have because national security is involved. And that is part of the procedure.

Chairman PIKE. Mr. McClory, you are wrong. The procedure as to the President's certification applies only to the release of information by this committee to the public.

What we are concerned with here is whether this committee has any information to release in the first place, and there is no Presidential certification offered or anything else.

Mr. McCLORY. Well, Mr. Chairman, let me just say that as a result of the procedures which we discussed at the White House—whether we are going to adopt these procedures or not—the amount of classified material that is going to come to this committee, even with the exceptions, I think will be so voluminous that we are going to have our staff overburdened going through the classified material long before we get to the point of deciding what we are going to release.

Chairman PIKE. Did you say the White House has told you they are in the process of delivering documents I don't know anything about?

Mr. McCLORY. I am telling you Mr. Marsh called me just before I came to the meeting and said he was sending materials here this morning. He said he expected that later on in the day the classified materials we requested would be forthcoming.

Chairman PIKE. We have received some declassified materials? Is that it?

Mr. McCLORY. Some materials—

Mr. FIELD. Mr. Chairman, could I read the letter that accompanied the material that just arrived?

It is a letter from Mr. William Colby, dated today.

[The letter is printed on p. 1513 of the appendixes.]

DEAR CHAIRMAN PIKE: Forwarded herewith is material which was unclassified or which has recently been declassified in response to your subpoena of September 12, 1975, with respect to Tet offensive of 1968.

The remaining material is temporarily withheld pending agreement on procedures with respect to its possible public release. I am prepared—

Chairman PIKE. Do we know what the remaining material is? Do we know what is being withheld?

Mr. FIELD. Mr. Chairman, item 6 of our subpoena was not complied with. That called for the original copy of the eyes only cable sent via

CIA channels from Ellsworth Bunker to Walt Rostow dated on or about October 28, 1967, concerning Vietnam. That was one of the cables Mr. Adams testified to, and it was a very important part of the controversy as to who was perhaps recommending that the figures in Vietnam be underestimated. This item was not complied with.

Throughout the materials here—just looking through them quickly—there are numerous deletions. For example, we mentioned the failure to penetrate the Vietcong and the North Vietnamese. There is a statement that the intelligence apparatus had no high-level clandestine penetrations of the Communist hierarchy. The rest of the sentence is deleted with the notation “technical intelligence.”

I assume it tells why they had no high level clandestine—

Chairman PIKE. You know, it is sort of like the old story about the bikini: What it reveals is significant but what it conceals is vital.

Mr. STANTON. I am a little concerned about the fact that Mr. McClory seems to be more interested in the volume of material that he is going to get from the White House than he is in the substantive nature of the material. At least he would seem to express it that way.

I think as long as we are talking in the area, not of information we are going to release to the public, but of information that this committee needs for examination, that the restrictions that are applied in this discussion draft are such that I have to concur with counsel. It will impair our ability to function in terms of getting the job done and, you know, I am not here to have a make-work project.

Mr. McClory. Will the gentleman yield?

I would just like to point out we should then indicate what exceptions we would acquiesce in. I think there must be some narrow exceptions that we would want to write into this. Let's do that. Let's try to work out the language which can provide the agreed procedures which, then, the executive branch—

Chairman PIKE. Mr. McClory, we did that. If you will recall, at your suggestion, we tried to work out procedures.

This did not pertain to access. It pertained to the release of information to the public. It was our understanding that these procedures would forthwith start the flow of these highly classified documents. We now find that we have today received some declassified documents.

Mr. McClory. If the chairman will yield, it was my understanding that there was nevertheless in the procedures which we adopted—which were simple and understandable—a tacit understanding that the names of agents would not be included in the material that we would consider releasing in the first place.

Now, if there are any exceptions as to materials that we are to receive, I think we should add that.

It seems to me what the Executive was recommending were details with respect to a procedure that we had agreed upon.

Chairman PIKE. I don't read it quite that way.

Mr. Lehman.

Mr. LEHMAN. Thank you, Mr. Chairman.

Back in 1917, Senator Hiram Johnson, when he was questioning the entry of this country into the First World War, made the statement on the floor of the Senate that in war, the truth is the first casualty. I think of that statement now because I think the reason I wanted to—felt that I could make a contribution on this committee is that I wanted

to get to the truth and I felt that the American people were entitled to the truth. I think the roadblocks that this particular agreement, this discussion draft, would put on this committee, would prevent this from happening.

We would have to go not only through the prescribed security agency, but the President, perhaps the leadership of the Congress, and even the courts. And I think that this particular committee or any elected committee of Congress—there are 537 people in this whole country who are elected to Congress and none of them happen to be serving in the intelligence community. I think the people who are elected to office in this country by the people of this country have as great a capability to determine what should be public and what should not be public as Henry Kissinger. I don't want to be bogged down in quotations, but sometimes Shakespeare says things better than I can. In "Julius Caesar," Caesar's colleagues say of him, "Upon what meat does our Caesar feed that he has grown so great," and I just wonder what kind of hamburger Kissinger has been eating these days.

Chairman PIKE. Mr. Donner, I think it might be useful at this time to go to the second phase of the draft which was presented to you by the White House with regard to procedures for release of material to the public.

Mr. DONNER. I think it would be simpler if I read that.

Chairman PIKE. Go ahead.

Mr. DONNER. It is entitled "Publication."

If the committee desires to publish any classified material and the appropriate executive agency objects, the following procedure would apply:

Let me just say at this point that there was intended to be an asterisk at the bottom of the page so it would be amended to read:

This procedure applies to interviews, depositions, and testimony as well as documents.

1. The appropriate executive agency will be given notice and reasonable opportunity to make its case to the committee, in executive session, as to whether the material may be made public.

2. If agreement is impossible, the committee will see to it that disputed materials are given to a special review board, made up of congressional leaders. If the review board agrees with the executive agency, the materials shall not be published. If the leadership board disagrees with the executive agency and concurs in the committee judgment that the material should be published, then they will so advise the President.

3. The materials will not be published if publication would, in the opinion of the President, be prejudicial to the national security of the United States.

At this point, Congress can still exercise its right to subpoena the materials and litigate the issue in court. As a technical matter to facilitate litigation, the document in dispute will be considered as loaned to the committee, and it will be returned to the appropriate executive agency in order to become subject to the congressional subpoena.

SPECIAL NOTE: These procedures do not, of course, apply to the ongoing work product of attorneys in connection with criminal prosecution and civil litigation.

Discussion of this item proceeded to the idea that paragraph two—which is the reference to congressional committees—probably was not specifically a part of yours and Mr. McClory's conversations with the President and was, in effect, deleted as a part of our discussion.

Then there was discussion of modifying the latter portion, where the certification of the President would be a personal and nondelegable obligation. The decision with regard to such a document would be

certified in writing by the President and would not cover the entire document, but would be limited to the precise area of the document which is sought to be released.

That would more or less cover it, but I have two more points to make, Mr. Chairman, if I may.

Generally, as we proceeded in this meeting, it was decided that the discussion over the exact terminology of every word in this paragraph would possibly present us with terribly long, ongoing and possibly insurmountable, negotiations as to terminology.

There was discussion, without agreement, that the memorandum would, in effect, just be put aside for the moment, rather than inscribing it in writing in the form of an agreement or memorandum. However, there was no substantial modification of the terms set forth in the agreement.

Chairman PIKE. In other words, the executive branch would proceed in this manner without any agreement; is that it?

Mr. DONNER. Substantially, that is correct, sir.

In addition, in going back to the first paragraph which includes the exceptions and the verification procedure, there was discussion—picking up a point that was discussed by the members of the committee—that no procedure after verification was set forth. Let's say, as an example, that after verification by yourself, Mr. Chairman, and Mr. McClory, you wanted to do something with the information that you had verified. Apparently, there is an open question, which was not resolved, as to whether or not you could relate the verified material to anyone else, including other members of the committee.

Mr. McCLORY. Wasn't there also discussion of a possible three-stage verification procedure by which we might initially have counsel consider the verification. Then if it seemed to be worked out, Mr. Pike and I would consider it and if we couldn't agree, we could go to the committee and try to work out some mechanism whereby the verification could be concluded?

Mr. DONNER. There was a suggestion of ad hoc treatment of each item as it arose, yes, sir, Mr. McClory. However, there is apparently no resolution that I can report to the committee.

- I would like to make one other point: That portion of the memorandum which says "These exceptions will not be used to withhold materials concerning alleged impropriety," et cetera, is what we call in law a condition precedent. In other words, the committee would have the burden of finding an alleged impropriety and alleging it as a condition precedent to the vacating of the exception. If we did not allege an impropriety, the exception would hold and they would withhold the material.

I would just conclude with this comment: This memorandum or discussion draft does not include the position of the State Department as a result of the representation of the Department by Mr. Eagleburger and his counsel, Mr. Leigh, at that meeting. There is no inclusion of State's position in this memorandum.

The position of the State Department, as represented by Mr. Eagleburger, was substantially that any discussion or presentation of testimony before this committee would be—I may be remiss in terminology—by higher level officers in the State Department, and not by lower level officers.

Then there was a modification of that position—that lower level officers may be interviewed and may be spoken to. However, development of their testimony or information based on such interviews would be limited to their factual reports and the recommendations in those factual reports which are specifically related to the facts. But no policy discussions or anything more would be permitted.

I would agree we got stuck in a semantic bog as to the differentiation between “recommendation” and “policy suggestion,” and frankly we did not proceed much beyond that point.

Mr. GIAIMO. Would you yield?

It wouldn't matter anyway, would it, because under this proposed agreement they claim that “if the committee desires to publish any classified material * * * the following procedure would apply,” and then it speaks of the restraints by the executive branch.

You say the classified materials include testimony, so that even if this committee were to hold hearings—have its witnesses and take testimony—they could classify our testimony, I gather. Is that right?

Mr. DONNER. It is a condition upon a condition, Mr. Giaimo. First there would be the condition as to whether or not we would get the materials in the first place, as far as the lower level officers of State are concerned. Then—you are correct, sir—whether we could do anything with the material from this lower level officer in State, assuming it was classified, would impose a further condition.

Mr. GIAIMO. I would like to make one comment, Mr. Chairman. We have spent hours and days discussing what is classified, what is secret, what isn't, what we in Congress can do and what we can't do, and yet I am always intrigued by the alacrity with which the executive branch, when it desires to declassify something, can do so with the stroke of a pen and send it up here; but they say that Congress doesn't have that authority—only those very unusual people in the executive branch can do it.

Chairman PIKE. I want to make just one comment on this draft regarding publication, and that has to do with the material under the asterisk. I frankly do not believe that such a limitation was either alluded to or even implied in our discussion on this matter with the President.

As I see it, even if they don't provide us with any witnesses, and we find our own witnesses, and our own witnesses testify before our committee, they want the right to classify what the witnesses—whom they have not provided—say to this committee. I find that wholly unacceptable.

Mr. McCLORY. Mr. Chairman, I don't think that exception is implied in there. I think that the meaning is this:

We did, for example, receive testimony from Mr. Colby in executive session. We did get classified information—classified testimony—from him. Some of it was very sensitive. I would say with respect to his testimony—to the extent we would want to publicly talk about what he told us in executive session—I think it would be only fair and consistent with our procedure to notify him of our intent to make this testimony public; and then if he wants to comment with respect to any parts of it, he would have that opportunity.

Thereafter, the committee would act, and the only exception then would be if there were something we intended to publicize that the President certified to us would adversely affect our national security.

I think that is what is implied—not the interviews and not the testimony of our own witnesses, and so forth. Naturally, they wouldn't have a right to censor that.

Chairman PIKE. I can't let that statement stand. As I was briefed by Mr. Donner after the meeting, it was the position of the executive branch that the testimony of Mr. Adams, for example, should have been taken only in executive session, and thereafter could have been released—but once again only with their consent.

Mr. GIAMMO. Mr. Chairman. We have been hearing these arguments for almost an hour. I don't think there is anyone on the committee who hasn't made up his mind one way or the other. I think the main question here is whether or not the Congress of the United States seriously intends to look into the alleged wrongdoings of the intelligence community. I think the other question is whether in fact there will be real cooperation by the executive branch. They publicly allege they are willing to cooperate, but when we get down to the nitty-gritty of it, we find they use all kinds of efforts and subterfuge to keep this committee and the Congress from conducting a thorough and necessary investigation. We can go round and round on it.

I think the executive branch has made up its mind that it wants to constrict and restrict these investigations as much as possible. I think the Congress—and by Congress I mean the House of Representatives—has to decide what it wants. I think the House has to make up its mind on what kind of an investigation it wants. Does it in fact want to look into alleged improprieties and the efficiency and effectiveness of the operations of the intelligence community? Does it want this committee to proceed. Will it support this committee in its quest for a free flow of information to us—not to make it public, as has been alleged, but the free flow of information to this committee so that it can do its job.

I think we ought to ask the House this question and ask that it make a determination as to what it wants to do in this regard. Accordingly I offer this resolution:

Resolved, That the House of Representatives considers the work of the Select Committee on Intelligence to be necessary to the investigation which the House has resolved to make concerning intelligence operations and considers noncompliance with the subpoenas issued either before or after the adoption of this resolution by the Select Committee on Intelligence to be a grave matter requiring appropriate enforcement.

Section 2. That William E. Colby, the Director of Central Intelligence, is directed to provide forthwith to the Select Committee on Intelligence of the House of Representatives the items specified in the schedules attached to and made part of the subpoena issued to that director under authority of the House of Representatives and dated September 12, 1975.

Mr. Chairman, I offer that resolution for the committee's consideration.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1477–1478 of the appendixes.]

Mr. McCLORY. Mr. Chairman, I really don't think we have gotten to the stage where it is appropriate to charge the Executive with subterfuge or anything of that nature.

I think insofar as the President is concerned, the crucial aspect of our inquiry was brought to his attention last Wednesday. He arranged for this meeting between you and me and the other affected individuals on Friday. Our counsel got together on Friday afternoon. They had a

discussion in which they tried to arrive at some procedures. They have not fully accomplished this, but it seems to me that substantial progress has been made. At least one area—the question of the committee's right to publish or make public material which was the subject of and focused attention on the conflict that we had with the executive—has been substantially resolved. I would in fact say that it has been entirely resolved by the President's willingness to personally certify where there was some disagreement between our procedure and the decision to make information public. I have discussed it with counsel. We have had special discussions on special procedures. The Executive is fully aware that the committee is contemplating some action. This would be action directed toward a confrontation—an essential first step, I would say.

I think the gentleman's resolution is premature, in view of the fact that we do have this assurance of full cooperation from the President, which I personally first expressed on Friday morning. I would certainly like to wait out the day, or wait out a couple of days, to see if we can't get a full understanding as to procedures with regard to all of these subjects.

If we don't like the draft that was presented to us, let's put in the language that we want—the draft that we want—to be the basis for our understanding, and cooperate, which is what we have got to do. A confrontation could frustrate the work of this committee by throwing us into the courts and getting us nothing.

In my opinion, we have assurances of getting everything we need, and I would hope we will find we were getting everything we need.

I am not interested only in the volume of material; I am interested in getting at the basic facts. All the members on this side are, just as much as other members of the committee. I will give you my assurance, Mr. Chairman, that if the kind of cooperation I think the President gave us assurance of is not forthcoming, we will act, and I will act with the other members of the committee in that respect. But not today, not at this hour, and not while we are at a discussion stage with our counsel to get the facts that this committee needs to do its job. And that I support fully.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Mr. Chairman, with your permission. I would like to give you my perception of this situation. I think what we are discussing this morning has extraordinary import. Let me begin by saying that obviously the ultimate test of national security is the ability to predict a direct attack on this country. Yesterday you appeared on a network program, Mr. Chairman, and made an extraordinary statement with respect to the ability of our intelligence community to predict an attack on this country. I think that speaks to the ultimate test. I saw that program and heard that report.

The American people should have extreme concern with respect to the ominous import of that statement. We as representatives, within the framework of the system of checks and balances, have the responsibility to determine whether your statement is accurate or not.

I think that is a minimal position we have to take. I think we have to seek any and all information we possibly can in order to determine the validity of that position. I think the overwhelming majority of the American people would be with us on that. The majority of us voted.

We employed a staff director. Our staff director has pointed out that in his wisdom, if we were to accept these conditions, we would either impair our ability to go forward or render any investigation totally and absolutely impotent.

Now, the question before us, it seems to me, is whether or not we agree with that position. I, for one, agree with it, and I am prepared to back the position taken by the Chair.

I would like to speak to what I consider both the practical and theoretical considerations here. With respect to the practical, I would say first of all to my distinguished minority leader of this committee, I would like to raise a few considerations. One: who decides, for example, what is dangerous? If we allow the executive branch to do that, are we prepared to go forward in another phase of this hearing to establish the question of risk with respect to our intelligence-gathering apparatus. I would suggest to you that if we allow the executive branch to determine what is dangerous, it would totally preclude any investigation into certain ongoing covert activities.

If we accepted this set of conditions and we could not speak with respect to the question of agents, how could we determine agent activities in Greece and Cyprus which would be a key to our understanding that entire situation? If we preclude any information with respect to organizations—for example, Bell Telephone or ITT—what would we do if we subsequently got information which led to their possible involvement? We would render ourselves impotent. I would suggest that no verification be established on material where the full committee does not have an opportunity for an input. The legacy of this committee, and the composition of this committee, goes back to the serious questions with respect to the first person in the chair of this committee, and I do not want to see that legacy continued.

You mentioned assurances from the President. I would suggest, for example, that in the case of poisons, President Nixon allegedly said, "Get rid of the poisons," and the CIA disregarded that. I think it stands on its own merit as to whether we can rely on Presidential assurances.

Going to the theoretical, which I think is important, if we accept the conditions, here are what I consider the long-range practical and theoretical implications: First of all, you totally limit, or seriously limit, the prerogatives of the Congress and make this branch of Government unequal. You destroy our oversight capability. As a special select committee, which almost certainly will be recommending a permanent oversight committee, we are establishing a precedent for a limitation on material which would go forward for many years and which would preclude the permanent committee's ability to function.

Certainly we cannot legislate effectively, given these limitations, and neither could we make effective recommendations on the floor of Congress.

For all these reasons I think we are in an intolerable situation. I think we have to take a stand. I think the recommendation of the Chair at this point makes a tremendous amount of sense. If it were to deteriorate into a partisan vote or debate, it seems to me that that would have deleterious effects on what this committee does. With respect to the American people's interest in this situation, I think it

would be a totally ludicrous posture. It has nothing to do with Democrats and Republicans; it has to do with our responsibility as representatives of the people. I think that for us to delay any further is an absurd exercise. Now is the time for us to take a stand and get out of the procedural battle we are engaged in.

Mr. McCLODY. Would the gentleman yield?

First of all, I want to say I disputed, on nationwide television this morning, the fact that our intelligence agencies were incapable of predicting an enemy attack. I think we have the best intelligence agencies of any country in the world.

Let me say further—

Mr. DELLUMS. I have yielded time to you, but I would like to point out I concur in what the Chair says because it seems to me he has made a statement based upon information that has come to him. That is the only way you can make a judgment. Based on the information that has come to us, we have been totally ineffective.

Mr. McCLODY. We have had some problems but we have also had some successes. I want to investigate the deficiencies in the intelligence community. But I think we should point out that I believe we on this side unanimously supported the issuance of subpoenas. I want the information. I want the material. It seems to me that we should continue in that way. When the gentleman made an unhappy reference to a Presidential directive which was not carried out with regard to chemical elements that were supposed to be destroyed, let me say that not only is this President laying his reputation—which is a good reputation and a credible reputation—on the line; in addition to that we reserve the right to verify whether or not that decision is valid. We also reserve the right to go to court to enforce our subpoena if we disagree with the decision that he makes.

I do not think we are talking about Bell Telephone or other organizations which someone wants to protect. I think we may be talking about organizations which are involved in some intelligence activities. I am not sure. This committee could decide what we want to receive and what we are willing to give up. I think we should proceed to develop the kind of procedures and the kind of arrangements that are essential in order for us to get the full information that we require to carry on the job. I don't think we should get into litigation or go to the floor and get into a big debate there which is bound to be a partisan affair. Because I can tell you this: I am going to be defending this administration as to the exception of disclosing the names of secret agents, or identities and things of that nature, and a large number of Members of the House will be doing that.

Mr. STANTON. I think the secret agents of America are well protected by the minority leader.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I don't think anybody on this committee is more concerned about the rights of a congressional committee than I am. If it gets down to a final confrontation, it is my opinion that the Congress must be able to get the information that it requires.

However, if you have examined the laws that the committee staff has assembled, you will have to acknowledge that the law is not that clear-cut. We may be rushing toward a confrontation in which we will lose. You may not be happy with the court determination. During the

first 90 years of this Government the opinion of the courts was that Congress was immune from going to court or from restriction by the executive branch. That doctrine has subsequently been modified. Now, if it comes down to a final confrontation, there is no question about where I will be. But I do not know that we want to get to that point yet.

I urge you to slow down a little. I can see the steamroller beginning to go. This resolution does not deal with the Eagleburger doctrine. I don't think this resolution really deals with the problem that has been presented. For example, the discussion draft very clearly says—and this is what is going to be presented to the public and to the Congress—"Identities of secret agents. * * * material provided confidentially by cooperating foreign intelligence services. * * *." When I read that language, I think it is entirely conceivable that we could obtain the information we want from the executive branch to enable us to go ahead and pursue this investigation and not have a real confrontation. Now, if it turns out that we follow this draft and we don't get the information we request, then it seems to me we are in a much better tactical position to proceed.

For example, Mr. Chairman, we do not even know how many of the pages of this noncompliance document we need; how many of the subpoenas we have issued have not been complied with; we don't even know how many documents under this particular compilation we have would not be complied with under the discussion draft. Counsel has not given us that information yet.

How do we know but what we would not get that information?

Chairman PIKE. If the gentleman is asking a rhetorical question—

Mr. JOHNSON. I am asking for evidence on that particular subject before we vote.

Chairman PIKE. I would simply say—and this is not a legal proposition; it is a practical and political proposition—the only evidence I have that we would not get these things is that we have not gotten these things.

Mr. JOHNSON. But we have not agreed to this procedure either.

Chairman PIKE. We have been operating more or less under this procedure. They have given us nothing that they didn't want to give us.

Mr. JOHNSON. I am not taking their side against you, because I think you have been reasonable. We now have this discussion draft, which may also be reasonable. It does not deal with the Eagleburger doctrine, which I have more of a problem with.

What I am getting at, Mr. Chairman, is this:

Are you that confident, if we go to court, that you are going to get what you want? I don't know that the law is that clearcut. I say this as a result of studying the staff's compilation of the laws over the weekend. It gave me pause. I think if we can work out a procedure that is acceptable to us to get the information, we had better adopt that procedure and not rush into a headlong confrontation in the courts.

Chairman PIKE. If the gentleman is through, I would simply respond as follows: We are never going to be confident that we can get the documents that we want by going this route or any other route. If we do not know of the existence of documents, we can never be confident that we are getting them.

If the Congress finds William Colby to be in contempt of Congress, we are still not confident that we will get the documents that we are seeking. If the Congress finds William Colby to be in contempt of Congress, as I understand the law, there are two things we can do: One, we can send the Sergeant at Arms out to arrest William Colby and ask him to produce the documents; or two, we can certify the contempt to the U.S. attorney and ask him to prosecute William Colby for contempt.

Now, very frankly, I do not have any great high regard for the effectuality of either of those procedures, but I do think it is time the Congress took a stand and it is time the Congress said, "We want these pieces of information." I think it is time the Congress faced up to its own responsibilities. I am not sure that the Congress wants to exercise oversight, to tell you the honest truth.

I see many symptoms, from time to time, that the Congress is not eager to bear the responsibilities that go with oversight. There are tremendous responsibilities involved with oversight. But I think it is time we went to the House of Representatives and asked them.

Mr. JOHNSON. Mr. Chairman, you are not just asking for subpoenas. Chairman PIKE. I am asking for information.

Mr. JOHNSON. They have agreed to supply everything except identities of agents, sources, persons and—

Chairman PIKE. Keep going.

Mr. JOHNSON. And organizations.

It says identities; it doesn't say reports. There is a difference between identities and reports. It doesn't say they will withhold the reports.

Chairman PIKE. You are only reading the first part of the exceptions. They are unwilling to reveal organizations which might—

Mr. JOHNSON. I did read about organizations, but it doesn't say no reports from those organizations or sources or persons. Is it that critical we know those identities if we have the source?

Chairman PIKE. I happen to agree with our staff director, Mr. Field, who believes that the restrictions imposed by this agreement would make it extremely difficult, if not impossible, for the committee to function.

Mr. JOHNSON. I move we go into executive session to find out whether or not Mr. Field is correct.

Mr. KASTEN. Will you withhold that?

Mr. JOHNSON. I withhold.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. I think the fundamental question is: Who is going to operate this investigation? The draft seems to guarantee this committee any amount of bootleg information—whether we bootleg it in terms of the Sam Adams category of bootleg information or whether it is bootlegged to us under the official seal of Mr. Kissinger, Mr. Colby, or for that matter the President of the United States.

I, for one, am not really willing to participate in that kind of a tangential investigation because what it amounts to is, I think, a type of journalism that we shouldn't be involved in. We are in the legislative process. Quite frankly the most thoroughgoing investigation of this entire matter over the last couple of years has been conducted journalistically. We pale in terms of what has been done there. Our

obligation to the rest of the House, under the resolution we operate under, is to provide for it some legislatively asserted facts, and through that legislative process provide the foundation for suggesting what, if anything, the Congress ought to do in regard to intelligence in this country. I do not know how we can do this if we consent to something that is virtually guaranteed to continue that bootleg—that type of journalism that we really don't have a role in.

Mr. McCLODY. Will you yield?

Mr. HAYES. Yes.

Mr. McCLODY. If we went to the district court right now and tried to enforce our subpoena, I think we would be turned down. This resolution is really a prerequisite to our trying to enforce a subpoena. That is the reason why, if we can't work out an agreement with the executive to get the materials, I am going to support some such action as this, because I want to see that the subpoenas are complied with.

I feel that the subpoenas are going to be complied with by all the intelligence agencies. If I didn't feel that way, of course I would be taking a different course of action. I think we have their agreement to give us all the things we require for our investigation.

Mr. HAYES. Mr. McCloidy, if I can simply, by way of answer, tell you that it really doesn't seem to me to be important whether or not this is a prerequisite or a condition precedent to going to a Federal district court. Frankly, once anyone gets involved in that third branch of Government, that is another game, and it is not our responsibility. Our responsibility, it seems to me, is simply to pay attention to what is within our power. The resolution itself, if voted upon by a majority here, means simply that this type of discussion draft and this type of bargaining is not really fair. Do you have some assurance that I do not have or that the chairman does not have that if we give them 2 or 3 more days, they are going to begin to bargain down a bit in terms of how much will be bootlegged?

Mr. McCLODY. I believe we are going to be receiving large volumes of classified materials under their assurance that we should get everything that we require, and that no information will be withheld—certainly none which involves any improprieties or anything like that. The President does not want to conceal any improper action or any misjudgments or any other deficiencies. I understood that to be an assurance from the President.

As a matter of fact, I didn't know, Mr. Chairman, that these initial exceptions which have been referred to were any kind of a roadblock. I am taken a little by surprise in that respect. I thought the business of identifying persons was something we recognized.

Let me say further that this is not just the expression of the House. This is a step toward confrontation. I don't think that is the step we want to take today.

Mr. HAYES. Should that not be left to the judgment of the House. Mr. McCloidy?

Mr. McCLODY. No. We have already received our charge. It seems to me we should go ahead and fulfill this charge. This resolution would have to go first to the Rules Committee and then, under a rule, to the floor. Why do we want to carry our debate out there?

Let's get on with the business of getting the material, carrying on our investigation, and doing our work. That is what I wish to do.

Mr. HAYES. I yield back the balance of my time.

Mr. TREEN. I am opposed to the resolution at this time. I think it is most important that we try to have an arrangement which would permit us to do our work, rather than to have a confrontation although it might be interesting to have this confrontation. Indeed, after reading the legal materials, as Congressman Johnson did, I am fascinated by the legal question. Maybe we could get the court to rule upon the statute and ask for a declaratory judgment. It seems to me we ought to get our work done and not have a confrontation.

Also, Mr. Chairman, I would hope that when we do go to the floor to have this confrontation, we would have substantial agreement within the committee. I would not be able to agree with the committee in taking this action now and would fight it on the floor. I have a suggestion which I hope would lead to some resolution. But to back up, it seems to me that when we started this inquiry, there was agreement—substantial agreement—that sources and methods would not be delved into by this committee, or, at least initially, we would not ask for sources and methods.

Indeed, when we had the confrontation about the Tet post mortem, I think we agreed that sources and methods would not be gone into. This discussion draft deals with identities, sources, and methods, and sets forth a suggested procedure for the handling of that information.

From the discussion we have had here, we now agree also, it seems to me on protecting the identities of at least some persons, including the proverbial agent in Moscow. I think we might also go further and agree we would have to protect the identity of one in Cairo, Tel Aviv, or Jerusalem, et cetera. The question is, which identities do we protect; and secondly, who decides which of those will be protected in the sense of not releasing the information to this committee?

We have yet to obtain from counsel, Mr. Chairman—and I think you were endeavoring to do that by bringing the committee up to date—to obtain from our staff what suggestions they made with regard to this language which might protect that proverbial agent, that source, that identity. I don't know that any language has been offered to narrow down or to make more specific the material set forth in the first part of the discussion draft.

I would suggest, Mr. Chairman and members of the committee, that we set forth a resolution procedure similar to that set forth in section 2 with regard to publication of materials. That is, if we believe in a given instance that the identity of the individual is important or the source is important, or the technique is important, then we would invoke the procedure of resolution as set forth in the second section. As I understand the third paragraph of the discussion draft, verification procedures will continue to be available in case of committee questions concerning matters deleted by the executive agency. The chairman, at a minimum, would have the opportunity to learn the identity, the source, or the technique that is withheld, and then he could ask this committee, if he felt that we needed to have the identity, to proceed with the resolution procedure.

It seems to me, Mr. Chairman, if we adopt a procedure similar to that, we have not lost anything by agreeing to this discussion draft, with those modifications. I do not think we will have lost anything, particularly if we agree, as is part of the resolution procedure under

the publication section, that we have the ultimate right to disagree. We are not binding ourselves and may take the issue to court or go through any other procedure that we may wish to do.

In other words, we will have not given up any rights whatsoever, and yet we will put into motion something which gives us the opportunity to fulfill the mandate given to us by the Congress.

Chairman PIKE. I would like to just say in response to the gentleman; that I appreciate the confidence which he reposes in the Chair and Mr. McClory on the subject of verification. When you say you have not given up anything, I think you are dead wrong. You have given up the right to know that which the executive is willing to show to Mr. McClory and/or me. That is what has been given up. Congress is giving up—this committee is giving up—the right to get information.

Mr. TREEN. May I comment on that?

Chairman PIKE. Sure.

Mr. TREEN. The last part of my proposal was that we not give up that right, that we retain and not contract away our right to do all the things that we may now do, including that which is the basis of this resolution.

Chairman PIKE. But if I agreed with the executive branch that you should not have access to that information, how would you know about it?

Mr. TREEN. Well, Mr. Chairman, because in the first place the chairman, under this procedure, would have the right to get all of this information for the purpose of verification.

Chairman PIKE. No, I would have the right to look at it.

Go ahead.

Mr. TREEN. You would have the right to look at it and could come to this committee and say, "I think, in this instance, we need the identity of this individual."

Chairman PIKE. Negative. That is not what they said. They said I could look at it, but I could not even tell you about it.

Mr. TREEN. It may be correct that you could not, but you could still come to this committee and say, "I, as chairman, believe the identity of this person is important," and we could then go forward with this resolution or any other resolution.

Chairman PIKE. As I said earlier, I think that there is a very real question as to whether Congress wants to exercise its oversight responsibilities or not.

Mr. Giaimo.

Mr. GIAIMO. I have been raising hell here with the adequacy of the Government's oversight over the intelligence agencies. Let me raise some with the Congress. I don't think the Congress has exercised, or even wants to exercise, its oversight function. That is the problem. I think it is about time the Congress made up its mind as to what it wants to do here.

Just last week in connection with another subcommittee I serve on—Defense Appropriations—the full committee voted that it did not want to know the total amount of the CIA budget—even in committee, in secret. They did not want to know. They preferred to vote blindly on the budget for an intelligence agency of the country. I find this

shocking. But at least they made up their minds. They said they didn't want to know.

Let's let the House decide and let's let the House support us, or at least instruct us to either go ahead with a meaningful investigation or else hang it up right now and tell the American people that we are incapable of conducting a very real investigation which necessitates the free flow of information to this committee.

If we have to nitpick over every little piece of evidence as we have been doing for days—as we have been doing this morning since 10 o'clock—we are not going to get anywhere. Let's not delude ourselves. Let's say, "Let's hang it up and let them run rampant, as they have these past 25 years, and hopefully the executive will purify its own agencies because Congress doesn't want to take that responsibility."

I suggest that we on this committee ought to know where we stand with the House, and this is the way to find out. One final point: This resolution does not bring in the third branch; namely, the judiciary. This resolution is not one that says, "Courts, you tell the executive and the legislative branches what their respective rights and duties are."

This is something that is wholly within the province of Congress itself and can remain there. Let's find out from our colleagues in the House of Representatives what they want. I frankly am not sure what they want. I am not optimistic, I will say to my friend from Illinois. In fact, from my past experiences in intelligence matters, I am rather pessimistic. It has been the attitude of Congress that it did not want to know what our intelligence agencies have been doing. I think we on this committee ought to know. Mr. Chairman, I think you referred to that earlier; we ought to know what the Congress, and what the House, wants us to do. When we know that, we can act accordingly.

Mr. McCLORY. Would the gentleman yield? I think that one of the ultimate recommendations of this committee will be an improved method of oversight over all the intelligence agencies. That is not a decision for us to make today, nor is it a decision to be made next week on the floor of the House.

Let me say to the gentleman that he may not regard this as being part of the enforcement procedure. However, if reference is made to the first attempt of former Senator Ervin and his committee to enforce subpoenas in the district court, you will recall he was rebuffed because he did not have a certificate of necessity from the Senate. We had to pass legislation in order for Senator Ervin to go back into court, which we did. It was limited only to that—to his investigation.

Otherwise, we would have the right, right now, to go into court and enforce our subpoena. But under the existing law, it seems to me, this resolution of necessity is a prerequisite to the court proceeding.

If we take that route, this is the kind of resolution I want to support. But it is not the kind of resolution I want to support today.

In the first place, it is a proposal—a kind of discussion draft—that we have before us. I will say I am an optimist and I am glad I am because we need some optimists on this committee. I think we should continue to discuss this while expecting and anticipating that the Executive is going to provide the kind of cooperation that we require in order to do our job. I think it is forthcoming. It is at our fingertips right now.

Chairman PIKE. At the end of the tunnel, perhaps.

Mr. McCLORY. No. I would like counsel to continue discussions with Mr. Marsh, and whatever counsel is necessary, to see that we do get a procedure which is consistent with what has been indicated by the members here today. Let's see if we cannot pin this down. I do not care whether it is in writing or not; but we need a procedure that will satisfy us that we will get everything we need and which limits the meaning or import of their language so that it does not prevent us, as you fear, Mr. Chairman, from getting a material in the first place. I think this will enable us to get all the information we need in the first place to enable us to do our job fully.

Chairman PIKE. Would the gentleman yield for a question?

Mr. McCLORY. I certainly will.

Chairman PIKE. Would you accept the procedures which they have outlined under the heading "materials to be supplied" as the procedures under which this committee would operate?

Mr. McCLORY. Well, I would say this, Mr. Chairman: I would like to spell them out further. I would like to modify them, as I think counsel were undertaking to modify them. I think we should have these exceptions in our words, not in their words.

I think it requires some further discussions of counsel and further consideration by our committee. If we could recess this committee and reconvene in executive session today or tomorrow and sit around a table and discuss this, I think we could put together procedures which would be followed, would enable us to do our job, and would enable us to avoid the confrontation which otherwise is implicit in the adoption of the resolution.

Chairman PIKE. Mr. Donner, I see you are eager to say something.

Mr. DONNER. I am not assuming there is a misapprehension. But I would like to emphasize a couple of points: While the withdrawal of the written document generally was—I do not want to say "acceded to"—agreed to by the representatives of the executive branch, there was no modification of the substance of the document.

The next point that was completely unresolved, shall we say, was the question which has developed under the shorthand term of the Eagleburger doctrine. We did not make any substantial progress on this beyond what the committee heard from the testimony of Mr. Eagleburger. I want to quickly add that this is my opinion, but I do not think there has been any substantial progress in that particular area.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Mr. Chairman, I find this discussion incredible. I find it incredible because we are sitting here rationalizing a way to determine how we should not get information. I find that inconceivable. We are sitting here trying to figure out excuses why we should not know. It would seem to me that if we are to sit here rationalizing some basis upon which we would not get information, we have no reason for being here. The American people have already lost extraordinary faith in Government. We are their representatives. As their representatives, I find it repugnant to sit here in a discussion where we are trying to say, "Here are the various reasons why we should not have the information." I would just say to my distinguished colleague, Mr. Treen, and to Mr. Johnson—both of whom I have profound respect for—that

when you read the words "identities of secret agents, sources and persons and organizations involved in operations," what gets communicated is that we are talking about publicizing these identities. What we are talking about is our ability to understand the question. The issue of whether or not we go public with the information is a separate question; but I do not think there ought to be any compromises whatsoever on our ability to know. If we don't have the capacity to have the information upon which to make intelligent decisions, then the people who voted for us made a very serious mistake and they ought to run us out of office the first chance they get. But I don't think there ought to be any way at all upon which we can find a basis to rationalize ignorance.

If we are talking about 215 million American people and the chairperson is on television saying, "This is my opinion," and Mr. McClory is saying "This is my opinion," do you think that should stand without documented information upon which we can rationalize these judgments? I think this is absurd. I yield.

Chairman PIKE. Mr. Treen.

Mr. TREEN. I do not think anyone on this committee is trying to rationalize ignorance or keeping us in the dark. I think we are trying to find methods to allow this committee to go forward. I would ask this question: Let's say the CIA is attempting to recruit a foreign agent in a foreign country to give them information and he says, "Well, perhaps I will give you information, but now who is going to know about my identity? You know I am liable to get my throat cut if people know who I am." Then the CIA responds, "Only 100 Senators and 435 Congressman—535 people. We will be obligated to tell them your identity." I doubt seriously that person would have the trust you and I have in those 535 individuals to permit himself to be recruited with that type of procedure in force. The question, I think, is whether or not we have to have identities at this moment, Mr. Dellums, in order to do our work. I agree with you. I was very concerned about the statement of the chairman as reported in the press that we don't have the facility to predict an attack on this country. I agree with you that that has to be investigated. The question now is whether we have to have the identity of an individual at this moment in order to do our work.

I think that is the basic question. I will be glad to yield.

Mr. DELLUMS. I would only say that first of all, we are in no way suggesting that we want to know the names of tens of thousands of agents around the world. We are talking only about those agents who would allow us to get as clear a picture as possible on the problems.

As a base line, I would say we are duly elected Representatives who raised our hands the same day and swore to uphold the Constitution of the United States. If we don't exercise that responsibility, we are sitting here in a mockery. We are either credible Representatives or we are not. I don't want to sit through a discussion where we castigate ourselves that as representatives of the people we are in some way inferior to a bureaucrat who has a greater sense of morality or ethics than we have.

I think that is incredible.

Mr. TREEN. I do not think that is the question at all, Mr. Dellums. I don't think we are questioning whether 535 Members of Congress have a higher regard for this country or more or less ethics than anyone else. I have tried to suggest to this committee that we try to work with this procedure now with the understanding that if in a

given instance or instances we decide that the identity of an individual is important, we can still go forward with whatever procedures are available to us under the rules of the House or under the Constitution to obtain that information.

What I think you are asking for now is that there be no restrictions whatsoever on the identities of any persons. I say let's defer that until we get to individual cases where we may feel that knowing the identity is important. I don't think that argument suggests that I am trying to hide information or that I am trying in some way to handicap the work of this committee. I think it is a suggestion which, if the committee will give serious thought to it, will permit us to go forward with our work and reserve to ourselves the right to bring the controversy to the Congress or the courts at a later time. I yield back the balance of my time.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. Mr. Chairman, directing my question to the staff director, the gentleman from Louisiana indicated that if we did not have cooperation from the Executive he would support a proposed resolution to get that information—except identities, as he so calls them. Was there full compliance with the request to Mr. Colby in terms of the subpoena that was issued?

Mr. FIELD. As of right now, Mr. Stanton, the subpoena has not been completely complied with.

Item 6 of the subpoena was not included—substantial portions, I believe, of the documents before the Chair were deleted.

Mr. STANTON. Does item 6 deal with identities?

Chairman PIKE. Until you get a document you don't really know what it deals with.

Mr. FIELD. It is hard to know what is in the cable until we have seen it.

Mr. STANTON. Then the judgment on item 6 really rests with Mr. Colby, not with the committee.

Mr. FIELD. I think that is a good point. As a practical matter, as I am trying to conduct an investigation, the critical thing that has happened is that the burden of going forward—the burden of proof—has shifted. We always operated under the premise that Congress had a right to any and all information and it was up to the agencies to make an argument as to why, subject to our discretion, we might not want this information brought forward. Now it has shifted so we don't have a right to everything. They have a right to withhold and we have to make the argument as to why we need it. I cannot always make that argument, as a practical matter, unless I have had a chance to see the material or hear about it in some detail.

They are very good about making arguments as to why we should not have something. They were very convincing at times, and we accepted it at times. For me to have to make those arguments is putting a tremendous burden on me.

Mr. STANTON. Does the gentleman from Louisiana concur as to that type of burden? In other words, do you think the administration ought to have the burden of proof, or do you think we ought to have the burden of proof as indicated by the chief counsel?

Mr. TREX. I think it is up to this committee, if it decides the information is not forthcoming, to go to the House and let the Congress

make that decision. We have not agreed on the second part of this yet, Mr. Stanton. I think your suggestion is that I should not resist this resolution because it only deals with the Colby subpoena.

Mr. STANTON. No.

I am asking whether, if Mr. Colby has not complied with the subpoena, you would go to the House floor with the request. Would you go to the floor with the second part?

Mr. TREEN. It depends on whether or not we have worked out procedures which I think are satisfactory for protecting the national interest. I would, then. We have not yet. We have not agreed on anything.

Mr. FIELD. I think item 6 raises a good point. How do we argue that we need item 6 when we have not seen it? They were in a position, in a prior situation, to argue that some source might be involved that we don't need to know. They could make those arguments.

We have to operate from the premise that we have a right to all information and if they do not want us to have something, then we will listen. And we have listened.

I could not begin to make an argument for item 6.

Mr. TREEN. Does Mr. Colby suggest that he is not going to give us that information if we don't work this out?

Mr. FIELD. Yes.

Mr. TREEN. Whether we work this out or not, he is not going to give us that information?

Mr. FIELD. We have not received it in response to the subpoena. It is not in the materials he previously provided, and he indicated it is not in the materials he has just provided.

Mr. JOHNSON. That is the point I raised earlier. We don't know what they are going to withhold if we adopt this policy. As I read item 6, talking about the "eyes only" cable, if we agreed to the narrow exception of identities, or the other one of diplomatic exchanges, we would be receiving item 6; is that correct?

Chairman PIKE. I am not at all sure.

Mr. JOHNSON. Why don't we know what we would receive under these items which we have in the list of noncompliance? There are several pages of them. I would like to know what they would withhold, because all this material has been justifiably and legitimately requested. If they say they would not comply with any of these things, I would say that is the time to go ahead with the resolution. If, on the other hand, they are willing to give us the information—

Chairman PIKE. How do you want them to say it? They have not produced it.

Mr. JOHNSON. Because we have not agreed to the discussion draft.

Chairman PIKE. Do you think we should?

Mr. JOHNSON. I think we ought to try it and see what happens.

Mr. McCLORY. What we did originally, following the first refusal to provide us with materials, was to sit down and try to adopt procedures. I think I took the initiative and the committee supported the procedures. These procedures were in line with what the executive branch said it wanted. Then we found out that the procedures were not quite what they wanted. They wanted a lot more detail included. We learned what was in this discussion draft for the first

time on Friday. As a matter of fact, I did not see it until this morning.

I think what we should do, Mr. Chairman, is send our counsel back to hammer out whatever is necessary and have Mr. Field and Mr. Donner there so they can come back to us to report the resolution of this thing and we can start getting the materials we want and require. I think we are getting them already through our threat of adopting these procedures. I think if we pursue this line we are going to have a lot better success and as the gentleman from Colorado indicates, we may not be on the firm ground we think we are and instead of resolving this in a way satisfactory to the committee, we could be heading for litigation and a confrontation which would lead us nowhere. So I would certainly recommend that we do that, Mr. Chairman—recess this meeting and come back, say, on Wednesday, after they have had a chance to try to work this out.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. I would be perfectly willing, Mr. Chairman, to wait until tomorrow or until Wednesday or the next day, but I would like to remind everyone that this is not a permanent committee. As I understand it, it is a committee which terminates on January 31, 1976. That is not a long way off. There is a great deal of work to be done. If today's example is any indication of the spirit of cooperation with which we are going to get this job done, God help us. Bear in mind, we are talking here, I think, about at most two agencies—the CIA and the State Department's Intelligence Bureau. There are many other intelligence community agencies that we are supposed to be looking into. So if we delay until Wednesday, we are going to go on and on, and before you know it Christmas bells will be ringing and the end of this committee will be in sight. Therefore, I would object to delaying.

Mr. McCLORY. The delays are not caused by this side of the aisle or by me. I have been pushing ahead here. We had some serious delays for a matter of months, while you reorganized your side of this committee. That is where the big hangup has been.

We have been anxious to move ahead. If we need another month or two, I would support extending the life of the committee. I agree with the chairman that we should conclude this—and conclude it promptly. The reason I am suggesting that we not act on the resolution until Wednesday is that we will make a lot more progress that way than we will by approving a resolution and taking the matter to court.

Chairman PIKE. Mr. McClory, you have consistently seen progress just around the corner and it never ever happens. You thought we had an agreement with the President 2 weeks or a week and a half ago, and we adopted your proposals in order to get that agreement.

Having adopted your proposals, they said, "Well, that is the first bite, now we will come back for some more." They have now come back for more.

You want us to adopt these proposals. You keep seeing great cooperation just around the corner, but it is not there and it has not been there. I don't see it just around the corner this time either.

The question is on the resolution offered by the gentleman from Connecticut, Mr. Giaimo. Is the committee ready to vote on that resolution?

Mr. JOHNSON. Mr. Chairman, I made a motion a while ago and withdrew it. I renew it now.

I move that we go into executive session to get from Mr. Field the details of the information which he said led him to the conclusion that this would be an unworkable policy.

We have his conclusions, but we don't have specific reasoning from him for them. As much as I have confidence in Mr. Field, I still think we ought to go into executive session.

Chairman PIKE. The gentleman will be protected. We will vote in a moment.

Mr. Hayes.

Mr. HAYES. I have a parliamentary inquiry. If we vote on the proposed Giaino resolution and pass it, what would the timetable be in terms of its going to the Rules Committee? Could the chairman work that out?

Chairman PIKE. If the resolution passed, I would assume that the committee was also instructing me to go to the Rules Committee at the earliest opportunity. How fast the Rules Committee will operate, I simply don't know; but I would go on to the Rules Committee with the resolution.

Mr. HAYES. Would that be done by the middle of this week? Could you hypothesize?

Chairman PIKE. I would certainly request the Rules Committee to act before the middle of this week, but I simply do not know what their schedule is. We are not going to be leaping precipitously from here to the floor of the House. We are going to go through all of the normal procedures which any resolution requires before it is brought to the floor.

Mr. Lehman.

Mr. LEHMAN. I want to see if we can get back to the main purpose of this committee. I think you have stated it eloquently several times—(1) what does the intelligence community cost; (2) what about its productivity; and (3) what is the risk involved in obtaining this product. I think the three goals we have can best be expedited by this resolution. Like our colleague from Connecticut, I, too, am not very optimistic about the attitude of some of our other colleagues in regard to this. But if we are going to assume our duty not only in this committee, but in the House of Representatives, to take an equal part in the responsibility for the policy and activities of our intelligence community, I think this is the best way to start.

I would be happy to support the resolution of the gentleman from Connecticut.

Chairman PIKE. Before we vote on the motion by Mr. Johnson, I just want to make a statement which is rather embarrassing to me personally. I have done my very best to keep these hearings open to the public; I am, however, going to vote with Mr. Johnson. I am going to vote with Mr. Johnson not because I think anything vital would come out if we conducted the rest of this debate in public, but simply so I can, I hope, demonstrate the fact that I am prepared to go just as far as I possibly can to cooperate with the minority side in these discussions and in our efforts generally.

Mr. McCLORY. Mr. Chairman, if you will recognize me for this comment—

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I do want to say, since you indicated that I have been hopeful that we are going to get a response and we don't seem to get a response, that I saw a large volume of material delivered to the desk of our counsel this morning and I now have in my hand additional information which I judge to be classified, which was to be in the hands of this committee today.

Chairman PIKE. Is it stamped classified? It bears none of the impediments which is usually associated with classified information.

Mr. McCLORY. It is identified in the letter as being the kind of information which the intelligence agency itself considers. But regardless of that, it is information which we have just received. I think it bears out the fact that we are getting results. I think we will get all the material we require if we take the route of consultation and not confrontation.

Mr. FIELD. Mr. McClory, we have received communications on that. My understanding is that it is not classified.

Mr. JOHNSON. I want to go into executive session to receive the information Mr. Field said was classified, and upon which he based his assumption that this procedure would not work. I will then be glad to go into public session.

Chairman PIKE. The clerk will call the roll.

Mr. TREEN. Parliamentary inquiry. Do I understand from the chairman's remarks that the purpose of the executive session will be to receive information from Mr. Field and not for any other business of the committee?

Chairman PIKE. I cannot guarantee that. When we go into executive session, what we will do is up to the will of the committee.

Mr. TREEN. Thank you.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Aspin.

Chairman PIKE. Mr. Aspin votes aye by proxy and I vote aye.

Mr. JOHNSON. Do we have to sweep the room?

Chairman PIKE. I would hope not. The committee will be in recess until 2 o'clock this afternoon when it will meet in executive session.

[Whereupon, at 12:13 p.m., the committee adjourned, to reconvene at 2 p.m., in executive session.]

AFTERNOON SESSION

Chairman PIKE. The committee will come to order. We are in open session.

The order of business before us is the resolution previously introduced by Congressman Giaimo. Are there any amendments to the resolution?

Mr. McCLORY. Mr. Chairman, I have an amendment.

Chairman PIKE. The gentleman will state his amendment.

Mr. McCLORY. Mr. Chairman, before explaining the amendment or having the amendment read, I would like to raise this question: With respect to any action which we would take as a result of noncompliance with our subpoenas, I question seriously whether we have been in full compliance with our own rules.

I make that point because I was not at the meeting when the subpoenas were authorized and I have not seen the notice which said that the issuance of a subpoena, or the authorization of subpoenas, was going to be requested at such meeting. I was out of the city at that time. I think if I had noticed that that action were going to be taken, I might have returned for the meeting. I raise that question as a possible defect in the proceedings which we may be about to undertake.

I do offer this amendment, Mr. Chairman.

Chairman PIKE. Do you want any discussion on your technical objection to our procedure?

Mr. STANTON. Mr. Chairman.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. Where was the gentleman?

Mr. McCLORY. I was in London, England, at that time.

Mr. STANTON. I know I was notified.

Mr. McCLORY. I was on official business.

Mr. STANTON. How long were you there?

Mr. McCLORY. I was there for a total of 10 or 11 days.

Mr. STANTON. Each of us received notification. I know of no other member who did not receive notification. You wouldn't expect us to hold proceedings until you finished your sojourn, would you?

Mr. McCLORY. I was advised before I left that it was not expected action would be taken by the committee until my return.

I am raising the point because I don't want the committee to proceed in any defective way or in a way which would thwart our efforts to enforce our subpoenas. I raise the question that we may not have complied with our own rules. I would suggest that if we are going to take this kind of step, where we are going to move to the floor of the House and then to the courts, we should be sure that we have followed our own rules and that we have a sound basis for the authorization of the subpoenas.

Mr. STANTON. You don't have personal knowledge that we didn't follow our own rules, do you?

Mr. McCLORY. Well, I have read the rules and—

Mr. STANTON. You weren't here, so you don't know whether we did or we didn't.

Mr. McCLORY. I inquired of staff with respect to the notice and I understand no notice was given that subpoenas were to be authorized.

Chairman PIKE. Would the staff director reply?

Mr. FIELD. Mr. Chairman, according to my knowledge of the rules, we did comply with every requirement. We issued notice of the meeting 2 days before the meeting, which is actually 24 hours earlier than necessary; we had a rollcall vote of the committee. The chairman did indicate the specific nature of the subpoena, and there was a majority vote of the committee.

Mr. McCLORY. Did the notice indicate that the authorization of subpoenas was to be requested?

Mr. FIELD. The notice indicated the meeting would be for the purpose of approving subpoenas.

Mr. STANTON. I think the notice even included the language of the subpoenas.

Chairman PIKE. The notice did not have the language of the subpoena. The notice did, however, say the meeting was for the purpose of issuing subpoenas.

Mr. McCLORY. I just raised that question, Mr. Chairman. If counsel is satisfied and the chairman is satisfied, I won't pursue it.

Mr. FIELD. Mr. Chairman, for the record, the motion was introduced by Mr. Stanton and the "ayes" were Mr. Stanton, Mr. Dellums, Mr. Murphy, Mr. Johnson, Mr. Aspin, Mr. Hayes, Mr. Lehman, and Mr. Pike—which is a majority of the committee.

Mr. McCLORY. Mr. Chairman, I move now to the question of my amendment. I think counsel has a copy of it and I ask that it be read.

Chairman PIKE. Would the staff director read the amendment?

Mr. FIELD. Proposed amendment to proposed resolution of the Select Committee on Intelligence.

Amend section 1 of the proposed resolution by inserting in line 5 after the word "subpena," the following:

except with respect to names and identities of agents or operatives or other undercover personnel of the various intelligence agencies of the U.S. Government, and except with respect to the names, identities or other information which might disclose the identity or national affiliation of foreign agents, operatives or personnel employed by or cooperating with the American intelligence agencies, and except with respect to confidential information received by any American intelligence agencies or departments of the government under a promise of secrecy or confidentiality and except with respect to diplomatic exchanges which are secret or classified in any of the departments of the government, and except materials or documents relating to current or ongoing intelligence activities, and except such other materials, documents or information which the committee may deem unnecessary to its investigation of intelligence activities of the nation;

and

Amend line 5 of said proposed resolution by striking the words "or after" and,

Amend section 2 of said proposed resolution by inserting at the conclusion thereof the same exception as that proposed with respect to section 1.

Chairman PIKE. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. McCLORY. I think this amendment is essential with respect to any action we take to the floor of the House.

In the first place, the resolution proposes to get House endorsement of subpoenas that might be issued after the adoption of the resolution. Without knowing what subpoenas might be offered following the adoption of this resolution, it seems to me that it would be unfair

and very incongruous for us to ask the House to endorse and support us with respect to action which we might take in the future.

Now, that resolution would exclude from materials which we would receive the names and identities of agents or operatives and other persons who operate under cover.

I know that it would be important for this committee to get into areas where intelligence information has been supplied by such persons, but the identity of such persons would, in my opinion, endanger their lives, endanger the effectiveness of our own intelligence-gathering capability, and be extremely unwise.

Furthermore, we want to get from the House of Representatives support for our investigative activities—including our need to get vital information. However, if we go to the floor of the House and tell the Members that we want information which would include the identities of persons who operate under cover—including foreign intelligence agents and diplomatic exchanges, and other things which would be covered by the blanket language of the resolution which we would be offering to the House, I don't think we would get the kind of support in the House that I think the committee would otherwise receive.

I would suggest that this amendment would make the action which is offered here much more palatable, much more acceptable, and would thereby assure greater cooperation.

I might say that this has been a sensitive subject with respect to the procedures which the White House has proposed to us—to you and me, and now to the committee and to our counsel. It appears that information which the committee requires might come from some such sources, but it does not seem to me that under any circumstances we need to identify the person by name, or in any other way which would subject him or her to exposure to danger and thus perhaps hamper the good work that our intelligence agencies would be carrying out.

I respectfully move the adoption of the amendment, which is two-fold, and urge its adoption by the committee.

Mr. HAYES. Will you yield to a question in regard to the language?

Mr. McCLORY. Yes.

Mr. HAYES. Mr. McClory, what would be the difference between your language and the power that the President already has, as determined by the courts—which is to certify that he must withhold the information for the effective discharge of his Presidential powers? In other words, the enunciation the court has given to executive privilege. Why should we attempt to spell out and define in advance those things which need not be complied with?

Mr. McCLORY. I assume that this resolution of necessity is a resolution which we regard as a prerequisite for some court action. I think that if we adopt a resolution of necessity without recognizing the prerogatives of the Executive or without recognizing what the law already says with respect to the operations of an intelligence agency, we would be on very, very dangerous ground—first of all in the House of Representatives and then in the courts.

Mr. HAYES. Would it not be less wordy and would it not be cleaner legislatively to then reduce your amendment, if you are concerned about that, simply to that language which spells out "executive

privilege." I think that language has been made available to us. Simply say "except those things that the President personally certifies are essential to the effective discharge——"

Mr. McCLORY. No; I think that "executive privilege" would go beyond that. I am not acceding to executive privilege in this; I am recognizing that intelligence agencies have to operate with persons whose identity can't be publicized. Therefore, I am suggesting that the House support our need for information, but not our need to have the identity of individuals who might have intelligence information.

Chairman PIKE. The question is on—Mr. Dellums?

Mr. DELLUMS. Thank you.

First, I would like to ask the ranking minority person: Other than the fact that you have gone into extraordinary detail, what difference is there between your proposed amendment and the discussion draft's item No. 1, with the exception of the exclusion of the term "organizations?" There is virtually no difference in the statement. I think we went into executive session earlier today for the purpose of having staff give us, as best they could, a rationale for why this is inoperative. We now come out of the executive session, you offer an amendment with virtually no change, with the exception of the exclusion of the term "organizations"—and you even go into greater detail on it.

Can you tell me first: why are we now going into the issue of identities?

I would make one addendum. I think we are raising a red herring here with respect to identities of secret agents. Consider this fact: Philip Agee wrote a book. It included detailed names and descriptions of agents all over the world—but all hell has not broken loose. Why are we here today, building a straw man to take to the floor of the House for the purpose of defeating the Giaimo resolution and impairing our ability to function?

Mr. McCLORY. I am not offering this as a means of defeating the resolution. I added the words "names and identities." I grant this is without having knowledge of what was contained in the discussion paper, and let me say further that I think that the book by Philip Agee has done untold harm—not only to the intelligence agencies, but to officials in foreign governments, and to foreign intelligence activities. The political consequences to our Nation as a result of the publication of that book, in the identification of persons by name and in other ways, has caused damage to this country which we will have to sustain for years and years to come—perhaps permanent damage to this Nation from which we will never recover.

Mr. GIAIMO. Mr. Chairman, I move the question on the amendment and ask for a record vote.

Chairman PIKE. All those in favor of a record vote raise their hand.

A sufficient number—this is on the amendment. The clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. No.

The CLERK. Mr. Stanton?

Mr. STANTON. No.

The CLERK. Mr. Dellums?

Mr. DELLUMS. No.

The CLERK. Mr. Murphy?

Mr. MURPHY. No.

The CLERK. Mr. Hayes?

Mr. HAYES. No.

The CLERK. Mr. Lehman?

Mr. LEHMAN. No.

The CLERK. Mr. McClory?

Mr. McCLORY. Aye.

The CLERK. Mr. Treen?

Mr. TREEN. Aye.

The CLERK. Mr. Kasten?

Mr. KASTEN. No.

The CLERK. Mr. Johnson?

Mr. JOHNSON. No.

Chairman PIKE. No.

Mr. Aspin votes no by proxy.

Two "ayes," 10 "noes." The amendment is not agreed to.

Mr. STANTON. Mr. Chairman, I move the adoption of the motion by Mr. Giaimo.

Mr. JOHNSON. Mr. Chairman, I have an amendment.

Chairman PIKE. Was it your purpose to move the previous question, Mr. Stanton?

Mr. STANTON. No.

Chairman PIKE. Mr. Johnson, do you have an amendment?

Mr. JOHNSON. Mr. Chairman, I don't have a written copy of the amendment, but after listening to the arguments that were presented earlier, I would like to propose an additional section 3 to the proposed resolution which would say, "Be it further Resolved, That the House of Representatives hereby subscribes to and agrees to be bound by rule 7 of the rules adopted by the Select Committee on Intelligence."

Rule 7, as you know, is that rule which relates to the protection of papers and documents and which prevents access by other Members of the House to the information which is provided to this committee.

Chairman PIKE. Let me say that I think we all understand the sense of your amendment and I see no reason why we cannot vote on it. We now have a vote going on over on the floor of the House, however, and there may be some discussion about your amendment. I would suggest that the committee recess for 15 minutes to vote and then we will come back and address ourselves to your proposal.

[Whereupon, at 3:30 p.m., the committee recessed and reconvened at 4 p.m.]

Chairman PIKE. The committee will come to order.

The question before the committee is an amendment offered by Mr. Johnson. Do you want to address the amendment, Mr. Johnson? If you do, you are recognized for 5 minutes.

Mr. JOHNSON. Just briefly, Mr. Chairman.

As members of the committee know, our rules are in conflict with the rules of the whole House with respect to availability to noncommittee Members of the information which will be made available to the committee. One of the real problems which has arisen in connection with this conflict relates to the disclosure of information; and I believe that this conflict between the House rule and the committee rule is at least one of the basic problems we have with trying to resolve this difference. All I am saying is that if the House subscribes to rule 7 and admits, for the purpose of this investigation, that the

information will be made public only according to the committee's rules, this might, in effect, help resolve this problem we are encountering.

If we get into this kind of conflict with this resolution, in light of the legal memorandum prepared by the committee which says in effect it despairs of the effectiveness of a resort to court action, I am afraid we are going to get ourselves into a position where we render ourselves ineffective. I would, therefore, like to have section 3 adopted as a statement by the House which recognizes the validity of the problem of disclosure and that the committee has adopted sound rules that will perhaps help to alleviate the problem.

Thank you, Mr. Chairman.

Mr. DELLUMS. I would simply say to my distinguished colleague that I really think he is raising a very important and fundamental question that at some point the House needs to address. I would only say to the gentleman that I think this is the wrong vehicle to raise the question. I think, first, it would cloud the issue; and second, it would put this small, select and, in some quarters, unpopular committee in a position of mandating the Congress on this question—and I think that they would roll over us on this issue.

I think the substantive issue we are raising here is access to information. I think that, in and of itself, is a profound enough question for us to attempt to address. To take on the additional fundamental question the gentleman raises, I think, would weaken the resolution, weaken its chances of being passed by the House, and I think it would be an inappropriate vehicle. The House needs to take this issue up, debate it, and consider it fully. I think this resolution is not directed to the appropriate place.

Mr. JOHNSON. I would say to the gentleman this problem arose over the release of information—those four words. I imagine there are many people who would regret we have come to this impasse because of the release of those four words. We talk about the desirability, or the necessity, of getting the information. I subscribe to that. The executive branch talks about publication of the material containing those words. We never seem to be talking about the same subject at the same time.

Through this section 3 which I am proposing, I would like to acknowledge a certain validity to what they are talking about—try to alleviate this situation so that we can try to get on with the investigation. It is the investigation I am trying to preserve, not the conflict.

Mr. McCLORY. I think the gentleman's point is very well made. I think without the adoption of his amendment we are going to be extremely vulnerable—not only in the Rules Committee, but on the floor of the House and with the American public. I think we are going far beyond what we can expect to get from this House of Representatives when we suggest that we are going to require the furnishing of information, including the names and identities of persons who are undercover agents and then have that information available not only to all the members of this committee, and the staff, but also to the 535 Members of the U.S. Congress.

If we want to get an expression of support for the work that we are doing, we had better be pretty reasonable, and we had better be very careful about what we are asking support for. If we are asking sup-

port for information which includes the identities and names of undercover agents and which would be available to all the Members of the House upon their simple request, I think we are going to be put in a very, very difficult position.

I hope the gentleman's amendment is agreed to.

Chairman PIKE. The time of the gentleman from Colorado has expired.

Mr. Giaimo?

Mr. GIAIMO. Mr. Chairman, I speak in opposition to the amendment. If points of order were allowed in committee, I think we could raise one against this amendment, because we are taking something unto ourselves which really applies to the House.

I think we are just delaying.

The Rules of the House provide what the rights of Members are. They are ambiguous about this. We are going to have to refine them and redefine the rights of Members, but those are functions to be determined by the House of Representatives under House rules.

We do know that up until the present time Members in the House had very little opportunity to find out anything about secret agencies of the Government.

I can tell you that in the last week there have been revolutionary changes, in my opinion, about the rights of Members to find out what is going on in secret agencies, what budget figures exist, and so forth. I think things are going to change, but I don't think we can do it this afternoon or in this committee.

Chairman PIKE. Are we ready for the question? Mr. Treen, do you want to address yourself to the amendment?

Mr. TREEN. While I intend to support the amendment offered, I don't feel it will restrain the access of the other 435 House Members who aren't represented here, or their having the information ultimately, because Rule 7.3 says:

Until such time as the committee has submitted its final report to the House, classified or other sensitive information in the committee records and files shall not be made available or disclosed to other than the committee membership and the committee staff * * *.

This suggests to me—at least suggests to me—that once this committee has made its final report, then, even if the full House adopted this resolution with section 3, the House rule would prevail and all Members of the House would have access to all of the records of this committee.

Mr. HAYES. Mr. Chairman.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. I would raise a point of order against the amendment on the grounds it is nongermane to the resolution and is wholly superfluous to it.

Chairman PIKE. I am obliged to state that the gentleman's point of order comes too late. It is not timely at this point.

Are we ready for the question?

Mr. JOHNSON. May we have a record vote?

Chairman PIKE. All those in favor of a record vote, raise their hands.

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Mr. STANTON. No.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Mr. MURPHY. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. No.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. No.

Mr. Aspin votes no by proxy.

By a vote of 5 yeas to 8 nays, the amendment is not agreed to.

Mr. Stanton?

Mr. STANTON. I move the adoption of the resolution.

Chairman PIKE. Mr. Kasten, did you have another amendment you would like to offer?

Mr. KASTEN. I would like to propose one additional amendment.

Chairman PIKE. I will ask the gentleman from Ohio to withhold his previous question. The gentleman is recognized.

Mr. KASTEN. Mr. Chairman, the amendment I would propose is now being distributed. It states, "Amend section 1 of the proposed resolution by inserting on line 6 after the word 'intelligence' the following: 'And subject to agreed upon procedures for release of classified information.'"

For the information of the members of the committee, I am referring to the language which is in the discussion draft beginning with

If the committee desires to publish any classified material and the appropriate executive agency objects, the following procedure would apply: 1. The appropriate executive agency will be given notice and reasonable opportunity to make its case to the committee, in executive session, as to whether the material may be made public. 2. If agreement is impossible, the committee will see to it that the disputed materials are given to a special review board, made up of congressional leaders. If the review board agrees with the executive agency, the materials shall not be published. If the leadership board disagrees with the executive agency and concurs in the committee judgment that the material should be published, then they will so advise the President. 3. The materials will not be published if publication would, in the opinion of the President, be prejudicial to the national security of the United States.

I guess there are two points, Mr. Chairman and members of the committee, that I am trying to get at.

Mr. HAYES. A point of inquiry, Mr. Chairman. Has the gentleman written part of his amendment out and then read the other part?

Chairman PIKE. The other part he was reading was from the draft proposal submitted by the White House on the subject of the release of information.

Mr. HAYES. Is it clear, then, that this piece of paper is the total language of your amendment and the other words you were reading were by way of explanation?

Mr. KASTEN. The piece of paper is the draft of the amendment, and what I was trying to do was define agreed-upon procedures so that you would know what I was referring to.

Mr. HAYES. Mr. Chairman, I would like at this time to raise a point of order on the grounds that it is nongermane to the resolution.

Chairman PIKE. I feel constrained to overrule the point of order. It seems to me that it could be germane to what we are discussing, and I think that the amendment is properly made insofar as the issue of germaneness is concerned.

Mr. HAYES. Before the chairman rules, may I respond in support of my point of order?

Chairman PIKE. You may. I had an uneasy feeling that I had ruled, but go ahead.

Mr. HAYES. The proposed resolution, Mr. Chairman, involves, first of all, a vote which asks the entire House of Representatives, first, to consider the kind of task that is before this committee, and that is the point to section 1. Section 2 is a specific request, asking the whole House to direct an executive officer to carry out an act, and it sets forth what that specific act is; that is, to comply with the items of the September 12 subpoena from this committee.

If the amendment were allowed, it would further subject the language of section 2 to conditions and to qualifications that are far outside the scope and coverage of the resolution. And for that reason, we are becoming involved in a cluttering that is really not even before this committee and specifically not before the House of Representatives—nor do I think that the committee ever intended to drag those kinds of issues before the entire House of Representatives.

Chairman PIKE. On reconsideration, the Chair finds that while the gentleman may well have made a good argument against the amendment on its merits, I nevertheless feel constrained to rule that this amendment can be considered germane to the basic issue with which we are confronted, and I would overrule the point of order.

Mr. McCLORY. Mr. Chairman.

Chairman PIKE. Let me just ask if Mr. Kasten is through.

Mr. KASTEN. I would like to continue for a moment in support of the amendment.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Mr. Chairman and members of the committee, the question here is not whether or not we should receive information. I think there is no question but it is the intent of the committee, and it will be the intent of Congress, that we receive the information we need, and we should receive it in the form that we have asked for it. But one of the problems in the executive branch, and one of the problems of each and every member of this committee, is what we do with this information after we get it. It is my hope that we could define, for the purposes of the Congress and for the purposes of the executive branch, the nature of our process as we declassify information. There

have been a lot of questions on unilateral declassification, and I think that those should be cleared up before we receive this kind of information.

In my opinion, the questions on these limitations on publication of the data, and the questions on the declassifying of this data, could not hinder our investigation one bit. I think, in fact, it could help our investigation because it would take one stumbling block away—it would take one problem away—and we would be able to work with the executive branch rather than go at them through a series of confrontations.

I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding. I want to commend the gentleman for offering this amendment, because it does indeed provide an area where we have agreement, or understanding—where we have a basis upon which we can receive classified information and under certain circumstances publicize it or declassify it through this committee. I think that since we are assuming that prerogative, and since that prerogative is recognized by the Executive, we should include this as part of our resolution.

Now without this, and without the other amendment that I offered, I think we are going to be very, very vulnerable in the House of Representatives. Instead of going to the floor of the House and getting a large vote of confidence in this committee, we are throwing ourselves wide open to criticism.

In addition, it seems to me that without this amendment we are playing into the hands of the Executive, because we are saying that we are rejecting the procedures which they have offered and which are acceptable to them. To invite a confrontation, it seems to me, is not only going to play into their hands but will also prevent this committee from doing the job it has undertaken to do: conduct a full investigation and carry out the constructive work that I think we are capable of doing.

I am hopeful that this amendment will be agreed to. But as a matter of fact, I hope the resolution will not be agreed to by the whole committee.

Chairman PIKE. The Chair would like to state that I am going to oppose this amendment, and I am going to oppose it for a couple of reasons: One, it refers to agreed-upon procedures as if there were agreed-upon procedures. The Chair has stated his own opinion as to what reasonable procedures might be. But there are no agreed-upon procedures, as far as this committee is concerned, as far as the House is concerned, or, for that matter, as far as the White House is concerned.

I think that we are close to agreement on this issue, but I don't know whether we have agreement.

The reason that I am going to oppose this, basically, is because, while I was willing to move toward a genuine compromise on the subject of the release of classified documents, I was willing to do so only in the context of an overall agreement as to our access to classified documents.

I have tried to make it very clear that it would be very easy to agree to procedures on the release of classified documents, if they didn't give us classified documents. They would say we could release anything.

If, by the same token, they give us everything we ask for, that is a

very different matter. But I think that the amendment does give away another point which Congress has a right to assert, without getting anything whatsoever in return, and therefore I am going to oppose the amendment.

Mr. Giaimo?

Mr. GIAIMO. Mr. Chairman, it seems to me that if we were to adopt this amendment, the basic resolution would be made a nullity. The basic resolution is direct. It says the House of Representatives considers the work of the select committee to be necessary, and they ought to make that determination. It says, further, that the House has resolved to make this investigation concerning intelligence operations. And it says, third, that the House considers the matter of noncompliance with subpoenas to be a grave matter requiring appropriate enforcement.

This is what this resolution says. If you add to it the hooker—which is in the amendment and which says, "Subject to agreed-upon procedures for release of classified information—" we are right back where we were at 10 o'clock this morning. We haven't agreed-upon procedures. This is the whole nub of this argument and debate and, if you will, this effort on the part of the administration or the executive branch to delay our continuing this work.

Until we have agreed-upon procedures, this resolution by the House, to make those three determinations that I outlined, would not be operative.

Mr. KASTEN. Will the gentleman yield?

Mr. GIAIMO. Yes.

Mr. KASTEN. Would the amendment be acceptable to you if the wording were changed so that, rather than using the words "agreed upon procedures," I simply said "subject to the following procedures," and then listed points 1, 2, and 3, which I have read. It seems to me your argument is that there have been no agreed-upon procedures, and I think that was also one of the major objections of the chairman.

Mr. GIAIMO. Do you mean 1, 2, and 3 from the discussion draft?

Mr. KASTEN. Yes.

Mr. GIAIMO. That would be even worse, because you would then be saying we ought to accept the discussion draft, which I gather is the proposal of the White House and/or Mr. Kissinger, or God knows who—but it is not ours. That makes it even more subject to their approval. We will be right back where we were.

We are either going to do our job as the legislative branch, or we are going to be pushed by the Executive branch. I think the House ought to make the determination as to what it wants us to do.

Mr. KASTEN. Would the gentleman yield further?

Mr. GIAIMO. Yes.

Mr. KASTEN. I wonder if you could answer the question, then, as to what procedures it would be your intent, or maybe the chairman's intent, we would follow in terms of publishing classified materials.

Mr. GIAIMO. As the gentleman knows, I have been involved in this since last week more than ever before in my life. I was just talking to my chairman in the other committee, and he is concerned about the problem.

Part of the problem here is that we know what is wrong, but we really have not figured out yet how far we go. Obviously, the gentle-

man and I and the rest of us, I am sure, recognize the need for an intelligence function in this country.

We also recognize that we cannot disseminate all of the information publicly. Much of the information we heard in executive session today obviously cannot be disseminated. In fact, none of it can be disseminated publicly.

Therefore, there has to be a limitation. We know what the limitation should not be, and that is that no one in Congress—or very few of us—should know. We know there has to be a greater awareness of what the intelligence agencies are doing in order to have adequate oversight over them. It is not a question of Congress resuming its oversight function. Congress never assumed its oversight function, if you will, in 25 years. And that is why we are here today. We are being pushed by the events and by public awareness to do something in this area. Where do we draw the line? I will say to you, I don't know. I recognize we cannot have full-blown disclosure. But I also want to have the gentleman understand that unless we in the Congress—at least some of us, and particularly, at this time, this committee—are the recipients of an unfettered flow of information from the executive branch, we cannot develop the facts necessary to make adequate recommendations for effective oversight. I say to you we are going to have to work that out—but it has to be worked out by us in the Congress. It cannot be worked out in terms of what they will let us do.

Chairman PIKE. The time of the gentleman has expired.

Are we ready for the vote? Mr. Dellums.

Mr. DELLUMS. I would just say very briefly to my distinguished colleague from Wisconsin that first of all, we have already informally agreed that the agency would be given notice and a reasonable opportunity to make its case before the committee. This is something we offered a couple weeks ago. There was no adequate response to it, but we did make that gesture.

I would also say to my colleague that I am more than willing to work toward some kind of accommodation in this area of publication, but I think that language in this particular proposal before us is debatable. I think the chairperson has already spoken eloquently to that.

I would say, in the words that became very popular during the Watergate era, "and subject to render the entire resolution inoperative." If they take 3 months to work out an agreement, this resolution is inoperative, and I think we have a profound responsibility with respect to the guts of this resolution to push forward on it. I would be inclined to oppose the amendment for those reasons.

Mr. McCLORY. Would the gentleman yield for a comment?

Mr. DELLUMS. Surely.

Mr. McCLORY. I would like to point out the arguments advanced by the gentleman from Connecticut relate to receipt of information by this committee, whereas the resolution directs its attention to the publicizing of information which the committee has already received. So I think his remarks were irrelevant to this proposed amendment.

Chairman PIKE. On the question. Mr. Milford, do you seek recognition?

Mr. MILFORD. I do, sir.

Chairman PIKE. The gentleman is recognized for 5 minutes.

Mr. MILFORD. I would rise to support the gentleman's amendment. Quite frankly, I am not personally convinced, at this time, that either this committee or the administration have done everything possible to reach agreed-upon procedures. The possibility of a constitutional confrontation concerns me very much, and I feel that going to the House at this time literally would be premature.

I would again appeal to the committee that, before we go to the House and to a constitutional confrontation, we write to the President to appoint a spokesman who can speak for him on these matters; and then in a closed session of this committee, we sit down with a stenotypist sitting there and work out—or at least attempt to work out—an agreement.

If we then find that an accommodation cannot be worked out to the satisfaction of both parties, then that record, itself, can be taken to the floor of the House. I think at least this procedure will show the country that we have responsibly sat down and tried our best to resolve this problem.

Mr. STANTON. Mr. Chairman, I move the previous question.

Chairman PIKE. The previous question is ordered.

The question is on the amendment offered by Mr. Kasten.

Do you want a record vote?

Mr. KASTEN. Yes.

Chairman PIKE. All those in favor of a record vote raise their hands. There is a sufficient number. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.

The CLERK. Mr. Stanton.

Mr. STANTON. No.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Mr. MURPHY. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. MCCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. No; and Mr. Aspin votes no by proxy.

By a vote of 5 yeas and 8 nays, the amendment is not agreed to.

Mr. STANTON. I move the previous question.

Chairman PIKE. The previous question is ordered.

On this one, I would suggest we have a record vote.

The clerk will call the roll on the resolution offered by Mr. Giaimo.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. No.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. TREEN. No.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike.

Chairman PIKE. Aye, and Mr. Aspin votes aye by proxy.

By a vote of 10 yeas and 3 nays the resolution is agreed to.

The committee will stand in recess until——

Mr. McCLORY. Mr. Chairman, I assume we will have a committee report. How long will we have? I want to prepare and file minority views.

Chairman PIKE. The gentleman is absolutely correct. We will have a committee report and the gentleman will be protected in filing his minority views. I would hope that the committee is now authorizing me to go to the Rules Committee.

Mr. GIAIMO. Mr. Chairman, I make a motion that the chairman be authorized to go to the Rules Committee in regard to the resolution and take all necessary steps to comply with the Rules of the House and bring this matter to the floor.

Chairman PIKE. Without objection, it is so ordered. I assure the gentleman from Illinois he will be protected with time to file his minority views.

Mr. TREEN. Mr. Chairman, under rule 8 of the committee rules, I would like to serve notice that I would also like to file supplemental views.

Chairman PIKE. The gentleman will be protected.

Mr. KASTEN. And I.

Chairman PIKE. Certainly.

The committee will stand in recess until 10 a.m. tomorrow morning.

[Whereupon, at 4:30 p.m., the committee was recessed to reconvene at 10 a.m., Tuesday, September 30, 1975.]

U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

WEDNESDAY, OCTOBER 1, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2118, Rayburn House Office Building, the Honorable Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Aspin, Murphy, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Gregory G. Rushford and Fred Kirschstein, investigators.

Chairman PIKE. The committee will come to order.

We have essentially two purposes for our meeting this morning. The first is to discuss with the committee members the question of whether we should accept the documents which were turned over to me last night, under the conditions they have set forth, as being in compliance with the subpoena which we issued.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1477-1478 of the appendixes.]

Mr. Field, do you have the letter from Mr. Colby to me setting forth those conditions? I think they will be familiar to all of you. But I want to make it very clear what those conditions are before we approve or disapprove of this action. Just to summarize them, they are essentially the conditions which Mr. McClory and I discussed with the President the other day as to the release of any classified information.

Do you have that letter, Mr. Field? Would you read it to the committee?

Mr. FIELD. For the record, I would note that the letter is classified "top secret" but there is a stamp on it that says that it may be declassified when the enclosure has been detached. The enclosure has been detached.

Dear Mr. Chairman: With the approval of the President, I am forwarding herewith the classified material, additional to the unclassified material forwarded with my letter of September 29, 1975, which is responsive to your subpoena of September 12, 1975. This is forwarded on loan with the understanding that there will be no public disclosure of this classified material (nor of testimony, depositions, or interviews concerning it) without a reasonable opportunity for us to consult with respect to it. In the event of disagreement, the matter will be referred to the President. If the President then certifies in writing that the disclosure of the material would be detrimental to the national security

of the United States, the matter will not be disclosed by the committee, except that the committee would reserve its right to submit the matter to judicial determination.

In some 12 instances in the enclosed classified material, excisions have been made of particularly sensitive matters. In 10 of these instances, they would pinpoint the identity of individuals who would be subject to exposure. In two cases, this would violate an understanding with a foreign government that its cooperation will not be disclosed. In each such case, Mr. Chairman, I am prepared to discuss with you, and the committee if necessary, the specific basis for this exclusion due to the exceptionally high risk involved, and I am sure that we can come to a mutual understanding with respect to its continued secrecy or a form in which its substance could be made available to the committee and still give it the high degree of protection it deserves. In case of disagreement, the matter will be submitted to the President under the procedure outlined above, and the committee would of course reserve its right to undertake judicial action.

Sincerely,

W. E. COLBY, *Director.*

[The September 30 letter from Mr. Colby and the September 29 letter to which it refers are printed on pp. 1513-1515 of the appendixes.]

Chairman PIKE. Does any member of the committee object to our receiving those documents under those conditions?

Mr. ASPIN. Mr. Chairman, I'd just like to ask a few questions. Does this procedure, in your opinion, conform to what you told the White House you would be willing to accept?

Chairman PIKE. In my mind it conforms to what I told the President that I personally would be willing to accept, but I told him that I could not speak on behalf of the rest of this committee or the Congress.

Mr. ASPIN. A further question, Mr. Chairman. Is the information that has been provided all that we have requested?

Chairman PIKE. That is a very good question. A cable we subpoenaed is missing. It is the cable to which Mr. Adams referred in his testimony.

Mr. Colby and Mr. Rogovin simply say they cannot find it. I believe them. I kidded them a little bit, but I told them that in the final analysis I do not believe there is an intentional withholding of a document in their possession.

Mr. ASPIN. A further question, if I may. What is the chairman's feeling about the 50 words, or whatever the number is, which have been deleted from the material that has been presented?

Chairman PIKE. I believe those words have been properly deleted.

Mr. ASPIN. Mr. Chairman, before we vote on this, let me be clear. We are establishing a precedent, am I correct?

Chairman PIKE. I think there is no question that we are establishing a precedent for this committee.

Before we vote, I want to point out that I do not see what we have gotten as any great triumph for this committee. I am not claiming any great triumph here. We have gotten precisely that on which we said we would move for contempt. We have gotten absolutely nothing else.

We have gotten no additional documents which have been requested from the State Department. To the contrary, a document which we discussed at some length yesterday—and which yesterday, I believe, we had been assured would be provided—we learned last night would

not be provided. So, I think we have gotten exactly that which keeps Mr. Colby from being in contempt and nothing else.

Mr. ASPIN. Then, in the chairman's view, what happens to our resolution should we vote aye—to accept this material under these ground rules?

Chairman PIKE. In my judgment we should go forward with it simply because we have gotten nothing else. I think that the resolution may have to be amended or modified, and addressed to some other person for some other pieces of paper. But that can be done in the Rules Committee on the recommendation of this committee.

I do not wish to lead the committee to believe that there has been any major breakthrough as to access of this committee to documents.

Mr. GIAIMO. Will you yield?

Mr. ASPIN. Yes.

Mr. GIAIMO. I am a little confused because I came in a little late. What is it, then, specifically? Why should we take any vote at this time?

Chairman PIKE. The only reason we should take a vote is that I made an oral commitment—which I am going to keep—that if we do not accept the pieces of paper under these restrictions, I am going to give them back.

Mr. ASPIN. As I understand it, these papers deal with the information that you wanted from Mr. Colby.

Chairman PIKE. That is right. That is all it deals with.

Mr. ASPIN. That is all it deals with.

I am not trying to create a confrontation. I think we should avoid that wherever possible. By the same token it seems clear that until we in Congress insist, we get little, if any, action from the executive branch. So insisting and taking a hard position is important. But what concerns me is that if we set precedents here today, they will be binding on Congress in the future.

Chairman PIKE. They will certainly be binding on this committee, and I would tend to agree that they would be used as precedents for the Congress generally.

Mr. ASPIN. Do we have to create a precedent here today? That is my question. Can't we just take Mr. Colby's testimony and not work out an arrangement formally?

Chairman PIKE. I do not think we can. I think they have offered the documents to us in good faith under certain conditions, and we are committed to accept those conditions or give the documents back. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I notice that we have the second of the two bells ringing.

Would you rather we recess before I make a statement?

Chairman PIKE. Yes; we will recess for 15 minutes. I think it is important that we discuss this.

[Brief recess.]

Chairman PIKE. The committee will come to order.

Mr. Lehman, you had a question?

Mr. LEHMAN. Yes, Mr. Chairman. I just have kind of a thing about deletions. In accepting these documents with these 50 some-odd deletions—

Chairman PIKE. I don't want the deletions to be misunderstood. I am told it is some 50-odd words. A deletion, on the other hand, can be very, very big.

Mr. LEHMAN. Yes. Now what concerns me is that if we accept these documents with deletions as stated by the chairman, will this prevent us or preclude us, if we so decide, from going back to Mr. Colby and saying that we need these particular names?

Chairman PIKE. No, it will not.

Mr. LEHMAN. If we want these deletions filled in, it will be up to us?

Chairman PIKE. No, that is not accurate, either. We have never been prohibited from going back to Mr. Colby, arguing the case, and taking it up to a higher level. We can take it up to the President. But I do not want to indicate to you that we will get it, no matter how hard we argue for it.

Mr. LEHMAN. But it does not preclude us from trying?

Chairman PIKE. No, it certainly will not.

Mr. LEHMAN. Thank you.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. There are two things I would like to talk to the chairman a little bit about to make a record on this issue. There are two aspects to this precedent setting we are doing here—if it is precedent setting, and I believe it is.

One is, what kind of precedent this establishes for obtaining further information—not only from the CIA, but from other intelligence agencies? Have there been any assurances, or any verbal discussions with the President or anybody in the White House, about what will happen in the future if we accept this information under these ground rules? What about our other requests—not only further requests of the CIA, but also the DIA and other agencies?

Chairman PIKE. I hate to say this in Mr. McClory's absence. I will say it and repeat it in his presence. Other than Mr. McClory's optimism, I have no such assurance at the present time. Would the staff agree with that? You know, you get vague hints, allusions and promises of goodies down the road; but at the present time I have no assurance, either written or oral, that our acceptance of these documents under these conditions is going to mean anything with respect to other documents from other departments.

Mr. ASPIN. A further question: It also does nothing about the problem we are having with the State Department concerning access to witnesses for questioning: is that right?

Chairman PIKE. Not one iota.

Mr. ASPIN. So what we are really doing is accepting this information as presented because the items in our resolution are included. But we have no guarantee that the procedure will go beyond that and solve other problems of access that are facing this committee.

Chairman PIKE. Mr. McClory, I want to repeat what I said earlier. Mr. Aspin asked whether I have any assurances that our acceptance of these documents would mean anything as far as the flow of other documents is concerned. I said that, other than your optimism, I have no such assurance. I have nothing, either oral or written, saying that other pieces of paper would be made available to the committee.

Mr. McCLODY. Mr. Chairman, if you will recognize me, I would like to respond.

Chairman PIKE. You are recognized.

Mr. McCLODY. I would like to respond by saying that in my conversations with the President—and I had a conversation with him yesterday—he indicated that he is going to cooperate fully with this committee with regard to all of the information which the committee requires for its investigation, and that he will direct the agencies of the executive branch to provide that kind of cooperation.

It is true that with respect to the procedures which Mr. Colby has outlined—and which I think are implicit in the covering letter which we have—there is a mechanism for our declassifying or releasing for publication classified material. This, as you indicated, Mr. Chairman, is acceptable to you personally, and I feel it provides a reasonable manner in which we can handle that almost unprecedented procedure.

I would like to say further that I inquired as to the other subject that was raised in yesterday's executive session with Mr. Boyatt—the committee's access to any statement regarding a policy matter which Mr. Boyatt had made to a senior officer. The question was raised as to whether he would be compelled, under his oral instructions, to remain silent in case of a misrepresentation of his policy recommendation. The President assured me that, with respect to any testimony, any junior officer has a perfect right and I would gather an obligation—at least to the extent there was no restraint on him to keep him from correcting any inaccuracy or misrepresentation—to refute that misrepresentation with his independent testimony.

Accordingly, I feel that the limitations which are thus seemingly placed on junior officers are only those consistent with the law and consistent with the effective and orderly operation and handling of our international relations.

Chairman PIKE. Are you saying that you find that that concept is implicit in our accepting these documents and that letter? Because if it is, I am changing my vote.

Mr. McCLODY. No. I am reporting on two things. I don't think the subject of the testimony of a junior officer is at all involved in the materials which we are receiving here.

I would say this, Mr. Chairman: I have personally gone to the President encouraging the cooperation with this committee which we are now receiving. All of my colleagues on this side have done the same. The Republican leadership has done the same. I think the response is a response to this committee. I would not want to regard it as a response to a threat. It is an attitude of this President, notwithstanding one columnist's comments to the contrary, and it is quite a contrast to the kind of stonewalling which we had in a totally different proceeding last year.

Chairman PIKE. Mr. McCloidy, may I ask you a question?

Mr. McCLODY. You certainly may.

Chairman PIKE. Why, in your judgment, have we not received all of the other papers which we have subpoenaed from the other agencies with the same covering letter?

Mr. McCLODY. Well, I judge that this response from Mr. Colby is a response to one request we have made. I would assume that we would

have similar responses from all of the other agencies. I do not see any reason why we should not.

Chairman PIKE. Why do you suppose we have not gotten them?

Mr. McCLORY. Frankly, Mr. Chairman, I would not be able to answer the question as to why we have received certain materials and why we have not received others. I don't have any idea of the total materials that we require. I can assure you that I want the committee to get the information and all the materials we require from the other agencies, as we are now receiving them from the CIA. I feel confident that we will get it. I feel confident that this President will see that we get it.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Let me state the situation as I see it, perhaps putting it a little in pessimistic terms. If it is too pessimistic, I hope the chairman will say so.

It seems to me we are being asked to accept certain information under certain guidelines laid down by the person who is giving the information—guidelines as to what we can do with the information. If we accept that, it seems to me we are establishing a precedent on how we are going to release information in the future. On the other hand, it does not appear that the agencies are accepting this transaction as establishing a precedent for them to give more information in the future.

I think that what we end up with is a situation where we accept a precedent on how we receive the information or establish a precedent on how we receive the information; but their giving the information is just a one-shot proposition with no guarantee that they will continue to do so in the future.

Mr. McCLORY. Will you yield?

Mr. ASPIN. Yes.

Mr. McCLORY. I do not think that is the case. The President has adopted a procedure under which the committee would release classified information. We initially adopted a procedure which provided for a review and comments by the affected intelligence agency. The procedure which is outlined in the letter from Mr. Colby now includes an additional element which Mr. Pike and I discussed with the President and others at the White House. That is, that in the case of disagreement between the affected intelligence agency and the committee, the President would have to personally certify that national security was involved in order for us to withhold the information. Even at that stage, if we then insisted that we wanted to make it public, we could litigate that subject.

It seems to me we may never get to the point where the President has to certify. I hope that we never get to that. But this is a mechanism whereby we can avoid this confrontation—avoid litigation, avoid contempt steps such as sending the Sergeant at Arms after Mr. Colby and things of that nature.

Chairman PIKE. If the gentleman will yield to me, I would like to say I think what you have stated is absolutely correct. I also think what Mr. McClory has stated is absolutely correct. But it avoids the basic question which you pose. That is, we have had no assurance that the adoption of these limitations on us in this instance will place

any duty on them to produce papers—or at least I have not received any assurance.

Mr. ASPIN. That is the point, Mr. Chairman. I think that is important.

Clearly, the thing we have to bargain with—and we were talking about a bargaining situation—and what he wants from us is some guarantee about how the information is going to be released. What we want from him is some guarantee of our access to the information. It seems to me he is getting what he wants without our getting what we want.

Let me further probe the extent to which we would establish a precedent, if I might, Mr. Chairman, by pinpointing these procedures and ground rules. I think the views of the ranking minority member, Mr. McClory, would be important on this. I would like to ask Mr. McClory and Mr. Pike what they view as the precedent that we are establishing.

If we accept these restrictions or procedures for releasing information, do they apply to this group of papers only? Does it commit us to follow this procedure in releasing all other information? Does it commit only this committee to this kind of procedure during its lifetime? Does it commit other committees or establish a precedent for other committees of Congress? Would they have to follow similar procedures? That is, is it going to establish precedents that will last beyond the lifetime of this Congress?

That is what worries me. If it were a one-shot proposition where we accept these papers under these conditions but it is not a precedent, I would not be so concerned. At the very least, Mr. Chairman, I would like to make sure that whatever we do, while maybe we are establishing a precedent for this committee, we are not establishing a precedent for other committees of the Congress and for other Congresses in the future.

I hope we will reserve our right to recommend some other procedure, because I think the procedure that is laid down by this is not necessarily the one that we want to establish for all time and for all places.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I suppose every time a committee adopts a procedure it will be referred to at a later date as a precedent if a committee wants to take similar action. This is, it seems to me, an initial and perhaps a unique procedure which we are considering with regard to a very sensitive area of information. We are a committee which is getting classified information in a way which I believe no committee of the Congress ever has before.

Mr. STANTON. Would you yield?

Mr. McCLORY. It is, I would hope, a pattern which we might be able to follow in securing additional information. If in our judgment we decide we want to make public certain classified information, it provides a mechanism whereby we can do so. If there is objection by the President on the basis of national security, we have left open the route of litigating the subject.

I would hope we would not have to get to that. But we can get on with the work of our committee by getting this large volume of classified information and then moving forward.

Chairman PIKE. Mr. McClory, we cannot get on with the work of our committee if we don't get the information. I have had no assurance that we are going to get it.

Mr. McClory. I thought you had it.

Chairman PIKE. We have that limited bit of information in response to the subpoena on Tet. We have nothing in response to any of our other subpoenas.

Mr. McClory. It would seem to me that we could proceed with the material we have and insist upon getting the additional material. I would assume that it would be forthcoming.

I know that this President wants us to receive all the information we require. This is evidence of it, and I think we will have further evidence of it.

Chairman PIKE. You have always had this feeling, but we have never had the papers.

Mr. STANTON. Mr. Chairman, let's be practical. If you tried to use this precedent in the Foreign Affairs Committee, they would laugh you right out of the room. The same would go in the Appropriations Committee. We are dealing with a specific instance here. We either accept it or reject it. We ought to have a vote on that question. I don't think anybody feels this is going to be binding on the Supreme Court or anybody else.

Mr. TREEN. Would you yield?

Mr. STANTON. Yes.

Mr. TREEN. I agree with the gentleman from Ohio. I have listened to the talk about precedent. While in a colloquial sense everything is a precedent, we are not bound by what we have done before. Indeed, if it would make other members more comfortable, Mr. Chairman, what would be wrong in making it clear, in whatever procedure we use here to accept this, that this subpoena is for this instance only, and is not considered a precedent? Certainly it is not a precedent. I don't consider it binding on me and I don't fathom the argument that although it is a precedent of sorts it is binding on any of us. I do not find it binding on me.

Chairman PIKE. The difficulty I have with your statement is that if we do not deem it to be a precedent for this committee, how are we going to get any other documents? We have said it does not represent the procedure which Mr. McClory says it does represent.

Mr. STANTON. Mr. Chairman, if I might, I would point out that we are going to have a good deal of difficulty getting information—especially information that might be particularly embarrassing to the administration.

We know that in terms of what we are dealing with. We have to have this information. There is a difference between what you would say you would abide by in rules that would require a free flow of information.

Mr. McClory would abide by rules in which he would put all his confidence in the President to disclose the information. I think we ought to vote on this issue, get it over with, and go from there.

Chairman PIKE. Is the committee ready to vote?

Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman. I have a few comments. First of all, I disagree with the majority of the comments made by most

of my colleagues here, because I believe that this is another delaying tactic. It is a piecemeal approach to a very critical problem. I think this committee ought to stand its ground. Whether we stipulate that the ranking member is correct—that there is no precedent involved here—I would suggest, first of all, that in this covering letter the condition is that we agree in effect to the discussion draft provision with respect to public disclosure of information. I disagree with that approach. No. 2, under the title "Materials to be Supplied," we heard testimony in executive session from our own staff which convinced several members to change their vote. The result was 10 to 2, to in effect reject out of hand the discussion draft laid down by the executive branch on the supplying of materials and the publication of materials.

It would seem to me that if we accept this material today within the framework of the covering letter, we are in effect backing off from the 10 to 2 vote of this committee; because, No. 1, identities of secret agents, sources and methods, organizations involved in operations, et cetera, are both implicit and explicit in this covering letter.

I don't have to repeat the language on public disclosure. I think that is very evident to most members of the committee here. I think we ought to stand our ground.

If the executive branch were operating in good faith, it would seem to me they would have given all the material to us. It has always been my thought—and I would clearly point out that it is simply my judgment—that the material that is most controversial and the material that has given rise to this controversy does not go to the Tet offensive nor the October war. It goes to the information on the coup in Portugal and it goes to the information with respect to Cyprus. Both bodies of material, I think, are highly explosive, and I think we are going to continue to be mousetrapped further and further down the line with more delays.

I think we ought to operate in the framework of a total solution. I do not think we should operate today in a fragmented approach. We are here today on Tet. We may be here next week on something else. If the executive branch wanted to be forthcoming, why don't we have a clear, unequivocal settlement on this issue?

I would like to ask the Chair one question for the record: Given the content of the covering letter and the content of the draft discussion that we in effect rejected in a vote of 10 to 2, do you see any substantial differences, and if so, can you point them out to me?

Chairman PIKE. I would simply say that the differences I find are, I suppose, in degree.

The words which have been excised from the materials which have been delivered to this committee I believe were properly excised.

Mr. DELLUMS. Thank you, Mr. Chairman. I would only point out that we have had tacit agreement here that we would make those determinations as a full committee. So I find myself having to vote on the deletion of at least 50 words with no ability to determine for myself, as a member of this committee, whether or not they, in fact, represent the examples in the draft copy No. 1 under the heading "Materials to be Supplied." In that regard, I think it would be premature for us to attempt to vote without clearly understanding to what degree we are compromising in this area.

I am not prepared in any way to vote to accept this material given these conditions.

The other day I voted with the 10. I have diligently attempted to support the Chair because I think the Chair has been logical, rational, and very courageous and clear thinking in this matter.

In this particular issue today, I find myself in a position where I probably will be in opposition to the Chair because I think our position is clear. I think our position is clean. I think our position can and will be sustained by the House of Representatives. In that regard I think we ought not attempt to resolve these large questions as a select committee. Let's find out whether the House wants to handle it for all time, one way or the other.

I think it probably premature for us to back off in this situation. I think the executive branch knows there is some validity to our argument; otherwise, they would not be coming here with a modification to a degree in their position. I think we should not back off.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I am constrained to make a statement because the last statement characterized my position as a member of the majority. I do not feel there can be any withdrawal from the premise that a congressional committee is entitled to the information that it needs to have to conduct its investigation. But I think any examination of the law will objectively require one to acknowledge the publication of sensitive material; and who will declassify it is something that is a gray area of the law. It is not that clear. The submission of the material subject to the letter of September 30, 1975, signed by Mr. Colby, is in essence in agreement with the position taken by the committee earlier as to the publication of sensitive material.

I find nothing offensive about it and nothing wrong with it. I intend to continue to insist on the right of this committee or any committee of Congress to get the information it needs to do its work. Whether or not it will subsequently declassify those documents is something that can be worked out, and should be worked out, at this point with the executive branch because the law is not clear. I find this committee meeting degenerating into a political harangue. I don't want to have anything to do with this kind of talk.

As far as I am concerned, the resolution has been complied with. The committee subpoena relating to September 12 has been complied with. The other subpoenas have not been complied with. If we want to take action with respect to the subpoenas which have not been complied with, let's do it. But let's not start talking about this administration versus some other past administrations. I personally have a great interest in various assassination attempts which have occurred in previous administrations. Covert activities which have occurred during previous administrations are of great interest to me. If we let this thing degenerate into a political harangue, then we are really good to miss the point—which is, in my judgment, an opportunity to make a contribution to the intelligence-gathering activities of this country and to remove the nefarious, clandestine covert activities which have occurred and which I personally am ashamed of. I would like to see us direct our attention to the real guts of the commission of this committee, and that is to do something and not make political issues and harangues.

If you want to go on and provide in your resolution that we will enforce the other subpoenas which have not been complied with, I will vote for you. But if you are moving toward making it a political instrument indulging in this name-calling process we seem to be degenerating into today, I don't want to be any part of it. I don't want my vote characterized.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I move the committee accept the materials which the committee has received and which you have explained on the conditions contained in the letter from Mr. Colby. I ask for a rollcall vote.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. I move the previous question.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. I would simply like to make a brief comment in response to my distinguished colleague.

Chairman PIKE. Will you withhold your motion?

Mr. STANTON. Yes.

Mr. DELLUMS. I am not involved in any kind of political harangue. I think it is tragic that we would even indulge in those kinds of labels. I am not interested in campaigning against Gerald Ford. He wouldn't get many votes in my district anyway. He wouldn't get many votes in Berkeley, so I think it is absurd to make that statement. I am not doing any name calling. I am saying that Congress, one, has a right to get any material that it needs in order to pursue an investigation. I frankly believe that we ought to come down on a side where we can publicize any material that we choose to publicize if we, in our judgment and within the framework of a democratic process, decide to do it. That has nothing to do with political harangue; it has to do with a statement of principle and a statement of judgment. You and I may disagree on those judgmental questions. It has nothing to do with politics or with Gerald R. Ford. It has to do with what we perceive as our rights as a committee.

Chairman PIKE. It is the position of the Chair that we understand the issues.

Mr. MURPHY. Mr. Chairman, I think what we are talking about is congressional intent, and I think the committee is unanimous in its feeling that it does not want to be bound by a precedent.

Perhaps we can be bound by this letter in this specific instance. It should be made clear that we are not establishing future policy.

Chairman PIKE. I would like to agree with the gentleman, but I don't think I can. I am afraid that if we accept these documents under these conditions, we are in effect setting a policy for no committee other than this committee. But I do think we are setting a precedent and a policy for this committee.

Mr. ASPIN. Can we make it clear we do not want this to be established as a precedent anywhere else?

Chairman PIKE. Let the record so stipulate.

Has anyone objection to that?

Mr. McCLORY. Without prejudice, we are receiving it.

Mr. STANTON. I move the previous question.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaino.

Chairman PIKE. Mr. Giaimo votes no by proxy.

The CLERK. Mr. Stanton.

Mr. STANTON. Yes.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Chairman PIKE. Mr. Milford has left me his proxy and I think it would be fair to state that would want me to vote it "aye."

The CLERK. Mr. Hayes.

[No response.]

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

The motion is agreed to by a vote of 10 to 3.

Mr. ASPIN. Mr. Chairman.

Chairman PIKE. Yes.

Mr. ASPIN. What is the intention of the Chair now concerning our resolution?

Chairman PIKE. It is the intention of the Chair to proceed with the resolution in the Rules Committee, if we do not get from the other agencies that which we have gotten from the Director of Central Intelligence.

It is going to be the committee's decision as to what we do with our resolution, but I do think that it remains there as our leverage. In my judgment, we have not given away all of our leverage. I think what we will do with it depends on what happens for the rest of this day.

Mr. KASTEN. Mr. Chairman.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I didn't understand, Mr. Chairman, what you said. You said that the resolution would remain in the Rules Committee, but at the same time you said that what happens to the resolution is dependent upon the action of this committee.

Chairman PIKE. I think that is still a fair statement. It seems to be a contradiction of terms. What will happen eventually is that I will go to the Rules Committee and they will have a hearing. I expect that Mr. McClory will go to the Rules Committee. While it is very clear that section 2 of our resolution is no longer operative, section 1 of our resolution is still wholly operative, and I expect that if we get from the other agencies of the Government this flow of information which is

always "just around the corner," section 1 would not be operative. I think that is where we are today.

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. McCLORY. If the chairman would yield, I assume we have no time limit on filing a report at this time, and if a report is to be filed we will be given ample notice.

Chairman PIKE. We have the time limit set forth in our rules. It is 5 days.

Mr. McCLORY. You intend to follow that time limit?

Chairman PIKE. I do.

Mr. McCLORY. Then I think the members should be guided. Those who want to file separate views—

Chairman PIKE. Let's make it very clear the members have until Monday to file any dissenting or additional views.

Mr. TREEX. Mr. Chairman, I was going to ask unanimous consent if we could extend that to Tuesday afternoon—1 more day—since the rush doesn't seem to be as great now. Could we have it Tuesday afternoon?

Chairman PIKE. No; I am not going to extend the time on that. I don't see any reason to extend the time. You say the rush isn't that great.

Mr. TREEX. It was just a request.

Mr. DELLUMS. May I ask you a question?

Since the committee, in its judgment, has decided to go forward as a result of this vote on the material we have, what do you consider a reasonable amount of time for the administration to respond with respect to the balance of the material we have requested in our subpoena?

Chairman PIKE. I am not going to try to determine what a reasonable amount of time is. I think if they are in good faith we will get some pieces of paper today. I think if they are playing a game, we won't.

STAFF BRIEFING ON CYPRUS

Chairman PIKE. The next order of business is a briefing from Mr. Field and Mr. Boos on the subject of the interview that Mr. Boos had with Mr. Henry Tasca, who was our Ambassador to Greece at the time of the Cyprus coup.

Now, Mr. Field, you may proceed.

Mr. McClory?

Mr. McCLORY. I wanted to ask this question: When is Mr. Boyatt coming back?

Chairman PIKE. I haven't asked Mr. Boyatt to come back. Under the restrictions imposed on Mr. Boyatt's testimony by the State Department, I see nothing much to be gained.

Mr. McCLORY. Mr. Chairman, as I indicated to you—and I think what the questioning of the witness really brought out—Mr. Boyatt would feel free to correct any inaccuracy in any statement by any senior officer.

Chairman PIKE. Mr. McClory, that procedure which is acceptable to you is wholly unacceptable to me. The whole concept of being told that we can question a witness on a document but can't have the document itself doesn't make much sense to me.

I don't know how to question a witness on a document that I don't have, and they have refused to give us the document.

Mr. McCLORY. I think the only question is whether testimony with regard to policy should be testimony coming from the junior officer or the senior officer, and the senior officer will testify, as I understand it, with respect to the policy subjects.

At least I would like us to try that. If we run into any kind of an impasse, I think that would be an appropriate time to suspend the hearing.

Chairman PIKE. We ran into all the impasses I needed yesterday.

Mr. McCLORY. The impasse was that the witness said that he was unclear with respect to his ability to correct any misstatement or any misrepresentation.

Chairman PIKE. That was not the impasse. The impasse was that Mr. Boyatt had prepared a memorandum of dissent. Mr. Boyatt did not have the memorandum of dissent with him. I believed that I had assurances from the State Department yesterday that the memorandum of dissent would be made available to the committee. I was told through counsel last night, and then directly, that the memorandum of dissent would not be made available to the committee. If we can't ask questions of the head of the Cyprus desk on what happened in Cyprus, I think we are wasting our time.

Mr. JOHNSON. I move we issue a subpoena for that particular document, Mr. Chairman.

Chairman PIKE. Mr. Johnson, I am obliged to say your motion will be entertained; but under our rules I think I am also obliged to give notice to the members of a vote on a motion to issue a subpoena. I will simply say that we will vote on your motion tomorrow.

Mr. Field, would you go ahead?

Mr. FIELD. Mr. Chairman, this morning we would like to give the committee a briefing on some of the Cyprus material. I think the best place to start would be with the post mortem. When we have finished with that, I would like to move on to Mr. Boos, who can discuss his interview with Ambassador Tasea.

The part of the post mortem I will read has been declassified. It is entitled "Post Mortem Report and Examination of the Intelligence Community's Performance Before and During Cyprus Crisis of 1974."

Chairman PIKE. Mr. Field, I just want to get something very clear. The document that I am reading from is classified "Top Secret." Are you going to give us a classified version of this document?

Mr. FIELD. No, Mr. Chairman, I am giving you the unclassified version. It has been declassified.

Chairman PIKE. It is a declassified version of the document which we have in our possession?

Mr. FIELD. That is correct.

Chairman PIKE. Thank you.

Mr. FIELD. Principal Findings.

THE RECORD OF PERFORMANCE

1. Like most international crises, the Cyprus crisis of 1974 consisted of a series of interlocking events, each, in sequence, presenting new problems for U.S. policy-makers and posing new challenges to the U.S. intelligence community. Seen, as it is here, as a test of both the sagacity of intelligence analysts and the ingenuity

of the intelligence collectors, the record of the community's performance during the Cyprus affair must be adjudged a mixture of strength and weaknesses:

There were a number of exemplary successes (such as the acquisition of a series of unique reports concerning the plans of Greek strongman Ioannidis to move forcefully against the Cyprus problem) and some prescient calls by analysts (including their forewarning of the Turkish invasion of Cyprus).

But there were some notable shortcomings as well. On the basis of a single CIA report from Athens, the analysts in early July, notwithstanding their earlier concern, conveyed the impression to the policymakers that the world had been granted a reprieve: Ioannidis, they suggested, had now decided not to move against Makarios, at the least for the time being. And, later, after the Turkish landing, the analysis misjudged Ankara's ambitions on the island, were persuaded that the crisis was about over, and thus gave scant attention to the possibility that Turkish forces might soon be on the move once more.

There was one "peripheral" analytical success which should receive explicit mention: an assessment of the role the Soviets were likely to play in the crisis which subsequently proved to be wholly sound. Quiet and undramatic as it was, this particular accomplishment was important and impressive nonetheless.

THE ANALYTICAL ASPECT

2. Ultimately, intelligence will be judged in the context of its ability to provide the consumer with premonitory assessments. The ability of the community to provide its consumers with the news *after* a crisis has erupted is widely recognized (and is pretty much taken for granted); it is the ability of the community to provide warnings of crises to come which is so often questioned. And it was here, again, in re Cyprus, where the community's analytical performance fell quite short of the mark, specifically its failure in July to estimate the likelihood of a Greek-sponsored coup against Archbishop Makarios (the incident which precipitated the entire crisis).

3. As was the case in the period before the Arabs' attack on Israel in October 1973, this inability to foresee critical events—in the face of mounting evidence to the contrary—seems to rest in part on an old and familiar analytical bias: the perhaps subconscious conviction (and hope) that, ultimately, reason and rationality will prevail, that apparently irrational moves (the Arab attack, the Greek-sponsored coup) will not be made by essentially rational men.

4. If this bias does in fact unduly influence the mind of the analyst, there is obviously no pat solution. But identification of the problem is a necessary beginning, the further development of training techniques (including those which help the novice analyst to perceive his own prejudices) is another; and, finally, the establishment of a regular system of devil's advocacy—which is currently under investigation by the IC staff—is yet another.

THE COLLECTION EFFORT

5. The bulk of information on the Cyprus crisis, especially in its early stages, was supplied by human sources.

With one notable exception (the previously mentioned report suggesting that Ioannidis would *not* move against Makarios), clandestine reporting contributed significantly to the intelligence effort during the pre-coup period. Clandestine reporting concerning the possibility of a Turkish invasion of Cyprus was also very good.

The quality of reporting from U.S. diplomatic missions was uneven. Thoughtful, accurate assessments were prepared in the weeks preceding the coup by the embassy in Nicosia, and strong reporting on the possibility of a Turkish landing on Cyprus was dispatched by both the embassy and the DAO in Ankara.

But reporting from the embassy in Athens, especially in the pre-coup period, was weak; it fairly consistently downplayed the likelihood of serious trouble over Cyprus, even in the fact of repeated expressions of great concern from Nicosia and Washington.

6. Analysis of the crisis may also have suffered as the result of the nonavailability of certain key categories of information, specifically those associated with private conversations between U.S. policymakers and their representatives on the scene and between these policymakers and certain principals in the dispute. Because ignorance of such matters could substantially damage the ability to analyze events as they unfold, in this or in any future crisis, the problem is

serious and one which should be addressed by the community and by policymakers as well.

7. Technical means of collection played a secondary role during much of the crisis. After the overthrow of the Archbishop in mid-July, however, the effort was greatly increased, and played a major role in providing military intelligence—for example, concerning a build-up of Turkish forces for the Cyprus landing. Photointelligence, partly because of built-in limitations, partly because of decisions by national policymakers to restrict manned overflights, was not a very active source during the crisis. FBIS, on the other hand, offered timely (and necessary) coverage throughout the period under review.

CONSUMER REACTIONS

8. Interviews with a number of consumers of intelligence on the Cyprus crisis indicate a degree of displeasure with both the performance and the procedures of the intelligence community. There were, surprisingly, few complaints about the failure to provide forewarning of the Cypriot coup, perhaps because the concern of policymakers and their staffs over the possibility of a coup did not seem to abate very much during the first half of July, despite some reassurances from the community.

9. But there were specific complaints (some legitimate, some not) from officers on the NSC Staff and in the Department of State about a variety of other matters: the alleged failure of the community to alert policymakers to the impending Turkish invasion of Cyprus (a notion which seems to rest on the complainants' failure to get the word); the plethora of CRITIC messages received during the crisis (a total of 86); the significance of many of which was obscure; an excess of cryptic raw reports from NSA which could not be translated by lay readers; the purported failure of the community to highlight significant items (there may be some substance to this) and to keep the reader abreast of military developments (a highly puzzling assertion which, on the face of it, seems contrary to the facts); and the redundancy of the CIA and DIA situation reports and the confusion occasionally engendered when these reports seemed to disagree.

10. Some of these problems are correctable, some not. Those which probably reflect in the main the inability of harried consumers to keep abreast of fast-breaking developments—indeed, to read all the relevant reports issued by the community—can be addressed but not solved. But others, such as the failure to call quick attention to highlights, can be remedied by improvements in the formats of the situation reports and by the issuance of alert memoranda by the DCI. And the problem of redundancy and confusion could be eliminated by the issuance of a single community situation report during major crises (a proposal now under development by the IC staff).

THE IMPACT OF INTELLIGENCE ON POLICY DECISIONS AND ACTIONS

11. We note, finally, that the Cyprus crisis provided excellent examples of the role intelligence plays in helping to shape (and to inhibit) policy decisions and actions. In five of the six key developments prior to and during the crisis, State Department initiatives (or lack thereof) were clearly consistent with, and were presumably based at least in part on, intelligence.

When intelligence warned of dire developments (Ioannidis' June threats against Makarios, Greek threats to attack the Turks in Thrace), the State Department acted to prevent them. When, on the other hand, intelligence failed to provide explicit warning (Ioannidis' coup against Makarios, Turkey's Phase II offensive on Cyprus), the State Department failed to act. And the State Department's relatively sanguine attitude towards possible Soviet reaction to Cyprus developments was clearly consistent with intelligence on that subject.

The only occasion when there appeared to have been an inconsistency between intelligence and policy action was with respect to the Turkish invasion. The intelligence warning of that event appears to have been explicit, but the State Department apparently did not act on it.

The following table summarizes these correlations:

Date: June 1974.

Intelligence: Intelligence provides explicit warning of growing confrontation.

Event: Ioannidis threatens action against Makarios.

Policy initiative: Embassy passes message to Ioannidis seeking to discourage action against Makarios.

Date: 3-15 July.

Event: Ioannidis plans coup against Makarios; passes reassuring message to USG.

Intelligence: Intelligence reassures consumers; provides no warning.

Policy initiative: No preventive action; USG clearly caught off-guard.

Date: 15-20 July.

Event: Turks plan Cyprus invasion.

Intelligence: Intelligence provides explicit warning, including date.

Policy initiative: State Department takes little, if any, preventive action; claims it did not get the message.

Date: 20-25 July.

Event: Greeks threaten Thrace offensive.

Intelligence: Intelligence provides strong warning.

Policy initiative: CIA, with Embassy concurrence, passes reassuring intelligence to Greeks which helps cool their ardor.

Date: 20-30 July.

Event: Soviets react benignly.

Intelligence: Intelligence provides reassuring appraisal.

Policy initiative: State Department accepts intelligence appraisal and remains relaxed about possible Soviet initiatives.

Date: 1-15 August.

Event: Turks plan Phase II offensive.

Intelligence: Intelligence warning is confused and unconvincing.

Policy initiative: State Department takes no action to dissuade; is clearly caught off-guard.

Error of fact.

Chairman PIKE. What is the source of this connection?

Mr. FIELD. This is from a memorandum written by the State Department reacting to the post mortem.

Chairman PIKE. And we have added it to this memorandum?

Mr. FIELD. We were asked when this was declassified. Mr. Chairman, to include this correction which had been submitted by the State Department apparently in the days after this report was prepared. The State Department had reviewed it and found that there was an error of fact in it.

Chairman PIKE. Go ahead.

Mr. FIELD. The error of fact states:

9. The report (on page vi in the Principal Findings section) lists various events, the status of intelligence on those events, and policy initiatives which followed the event. Opposite the Event column of 15-20 July (Turks plan Cyprus invasion), the Policy Initiative incorrectly states: "State Department takes little, if any, preventive action; claims it did not get the [intelligence] message." In fact, State did make an effort on 20 July in Ankara to persuade the Turks not to invade, at least for 48 hours (an effort which failed). The message which revealed this last minute bit of diplomacy noted, correctly, that it was likely to fail and that the invasion would probably begin that morning. The authors of the report did not have this message in hand when they prepared the report. They accept responsibility for the error and apologize for it.

Mr. Chairman, there is one other item which has been declassified. It is the only other item from the reports that were prepared at this time. This is from the National Intelligence Bulletin which appeared on July 15, 1974, which was the day of the coup—the day General Ioannidis took action to overthrow President Makarios.

Under "Contents," the headline for the Greece-Cyprus part of the world is "General Ioannidis takes moderate line while playing for time in dispute with Makarios."

That was the morning of the day in which he did not in fact take a moderate line, but overthrew President Makarios.

Chairman PIKE. That was the intelligence community's analysis of its own performance. It seems to our staff and to me that it sort of

tends to put the blame on the former Greek Ambassador and so we made an effort to talk to him.

You will recall that the intelligence community said that the intelligence coming out of Turkey was very good and that coming out of Greece was very bad.

Mr. Boos, can you report on your interview with the Greek Ambassador?

Mr. Boos. Thank you, Mr. Chairman. Before I do, I think it would be useful to give the committee some background. When hard line military elements led by General Dimitrios Ioannidis took control of the Greek dictatorship in November 1973, most observers assumed that relations between Greece and the Cypriot Government of Archbishop Makarios would go from bad to worse. Ioannidis was widely known to have intensely disliked Makarios and to have been a long-time proponent of enosis. That is, union of Cyprus with Greece.

Pro-enosis Greeks had regarded Makarios—who as President of Cyprus had achieved great prominence as a Third World leader—as an impracticable obstacle to the annexation of Cyprus into the Greek nation. Cyprus is geographically adjacent to the Turkish mainland and some 18 percent of its citizens are Turks. To accommodate the interests of the Turkish minority, a jerry-built governmental structure had been devised when Cyprus became independent in 1960. This structure provided for a President to be elected by the 80 percent Greek majority and a Vice President to be elected by the Turkish minority. This arrangement was a very fragile one, and Greeks and Turks have come close to war over Cyprus in the last 15 years. It is well known that the Turks had warned repeatedly that any effort to annex Cyprus into Greece would provoke a Turkish military response.

A full analysis of the background of a Cyprus dispute defies brief description. Suffice it to say that neither the Greeks nor the Turks were enamored with Makarios; in fact, Makarios was reportedly absolutely detested by leadership elements on both sides. Makarios had become a symbol of an increasingly unsatisfactory status quo.

Makarios' presence would at one point be politically useful to both Greece and Turkey; at other points, he would be an intolerable irritant for a variety of reasons.

The intelligence community post mortem reported that on or about June 20, 1974—some 3 weeks before the Greek-sponsored coup against Makarios on July 15—our clandestine sources in Greece informed the CIA, part of the country team in Greece, that Ioannidis was all but ready to move against Makarios.

Days later, Makarios, apparently sensing trouble, wrote an extraordinary open letter to the President of Greece accusing the Greeks of not only trying to remove him politically, but physically as well.

In that letter, Makarios demanded a recall of the scores of Greek mainland army officers who controlled most of the Cyprus defense forces. Shortly thereafter, the three top officials in the Greek Foreign Ministry resigned.

The official explanation was for reasons of health. But observers noted all three had been known to be opposed to Greek adventures in Cyprus.

[The letter referred to is printed on pp. 1516–1519 of the appendixes.]

At about this time, U.S. elements in Greece were told by an indi-

vidual, described in the post mortem as a new untested source, that Ioannidis had now decided, despite all conflicting evidence, not to move against Makarios after all.

According to the post mortem, the intelligence community chose to ignore the mountain of evidence that a coup was in the offing and preferred, instead, to believe a new, untested source.

To get some idea of why the United States apparently decided to disregard powerful evidence, Chairman Pike requested that I interview Henry J. Tasca, who was U.S. Ambassador to Greece at the time. Tasca, it was thought, would have important insights into the way intelligence was reported, evaluated, and used during this critical period.

Tasca, a career Foreign Service officer, was Ambassador to Greece from 1970 to 1974—a period which saw the continuation of the Greek dictatorship; the emergence of harder line officers in late 1973; decay of the regime in 1974; the Greek-sponsored coup against Makarios, the subsequent military confrontation between Greece and Turkey over Turkey's invasions of Cyprus and a return to democracy in August 1974.

Tasca retired from Government service in January 1975. In two sessions last weekend, we talked for some 6 hours of U.S. policy toward Greece, Cyprus, and Turkey; the role of intelligence in the U.S. Embassy in Athens; CIA's relationship with the former Greek strongman, Ioannidis; the management of intelligence at the Washington level, and U.S. activities at the time of the Cyprus coup and the Turkish invasion.

The following major points emerged from these interviews.

1. The CIA station in Athens had exclusive U.S. access to the Greek strongman, Ioannidis, and, accordingly, the CIA was the pre-eminent agent of American foreign policy toward Greece at this time.

Tasca indicated that CIA employees who were used to communicate with Ioannidis were long-time acquaintances of the Greek strongman.

The Ambassador was advised by the CIA that Ioannidis, who held no official government post, preferred to deal only with the CIA. Tasca was thus forced to rely on CIA assurances that their men in Athens were at all times faithfully reporting to Tasca all important messages to and from Ioannidis.

Since the CIA also controlled regular Embassy communications channels with Washington, Tasca could not rule out the possibility that the CIA had dealings with Ioannidis with regard to Cyprus without Tasca's knowledge. As he said, "I am not naive enough to think that there aren't situations where things are done without an ambassador knowing about it."

And so we had a situation at this critical period in which our Ambassador did not deal directly with the real head of the Greek Government, but was forced to deal instead with puppets. The CIA had to conduct U.S. foreign policy as far as the real power was concerned.

2. Tasca was taken completely by surprise by the July 15, 1974, Greek-sponsored coup against Makarios' Government on Cyprus.

Like most other observers on the scene, Tasca could see that relations between Ioannidis and Makarios were deteriorating. However, Makarios had been feuding with the Greek dictatorship for the 7 years of

the dictatorship's existence, and the two parties had been to the brink many times.

Tasca had no information indicating that a showdown was imminent. He flatly denied having been told by the CIA station that Ioannidis, on June 20, had threatened a coup. He denied being informed that the CIA received information shortly before the coup that Ioannidis had changed his mind. These two reports are verified in the post mortem.

Assuming that the post mortem is accurate, Tasca was kept in the dark by the CIA and was cut out of the action.

—3. Had Tasca been given the information that the CIA apparently had—the information that a coup was imminent—he would have, in his words, “turned the place upside down and taken the unprecedented step of personally warning Ioannidis that the United States would not stand for a coup against the elected Makarios Government.”

Tasca pointed out that in 1972, upon being given similar information, he had restrained the then-Papadopoulos Greek Government from a similar adventure. Because Tasca did not have this information, he rejected a State Department suggestion that he see Ioannidis. Joseph Sisco, Under Secretary of State for Political Affairs, who presumably did have complete information from all intelligence sources, did not tell Tasca that the situation was urgent and did not insist that Tasca pull out all the stops and see the Greek strongman.

4. Before the coup against Makarios, Tasca had always understood U.S. policy to be against a Greek attempt to remove the archbishop. He was therefore puzzled when, shortly after the coup, Arthur Hartman, Assistant Secretary of State for European Affairs came to Athens to inform the new democratic Greek Government that, in Ambassador Tasca's words, “It is important in the interests of the future settlement of Cyprus that Archbishop Makarios not return to Cyprus.”

Hartman informed the amazed Greek officials, who were, incidentally, long-time friends of the Archbishop, that he was not authorized to say more.

5. After the coup, Tasca, as our Ambassador to Greece, did not receive complete information on Secretary Kissinger's and Under Secretary Sisco's talks with the Turks to avert military confrontation. He had to learn of some Kissinger talks——

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Would you ask Mr. Boos to repeat four and five again?

Chairman PIKE. Mr. Boos, would you please repeat your items 4 and 5 again?

Mr. BOOS. I am on five now.

Mr. MCCLORY. May I make this inquiry? It seems to me your statement is being made available to the press; is that right?

Mr. BOOS. No, sir.

Mr. FIELD. That is the declassified post mortem.

Mr. MCCLORY. That statement you are making now hasn't been reproduced?

Mr. BOOS. This is the original copy and it has not yet been reproduced.

Chairman PIKE. Is there any reason it should not be reproduced for public distribution? We are in open session. Is there anything classified in this statement?

Mr. Boos. In my judgment, there is no reason why it can't be made available.

Going back to No. 4.

4. Before the coup against Makarios, Tasca had always understood U.S. policy to be against a Greek attempt to remove the Archbishop. He was therefore puzzled when, shortly after the coup, Arthur Hartman, Assistant Secretary of State for Political Affairs, came to Athens to inform the new democratic Greek Government that, in Ambassador Tasca's words, "It is important in the interests of the future settlement of Cyprus that Archbishop Makarios not return to Cyprus."

Hartman informed the amazed Greek officials, who were long-time friends of the Archbishop, that he was not authorized to say more.

5. After the coup, Tasca, as our Ambassador to Greece, did not receive information on Secretary Kissinger's and Under Secretary Sisco's talks with the Turks to avert a military confrontation. He had to learn of some Kissinger talks through a colleague. Accordingly, at a time when the Greek military was prepared to go to war against another NATO ally, Tasca was unable to reassure the Turks by removing any doubts of an even-handed U.S. policy on Cyprus. This was because, as Tasca says, no one told Tasca what the policy was.

6. Tasca was also greatly puzzled as to why the United States—which purportedly had a neutral policy between the two NATO allies—apparently did not complain when the Turks ignored the ceasefire arrangement that had been worked out by Secretary Kissinger; why the United States did not complain as the Turks ran amok, as Tasca saw it, all over Cyprus; why the United States did not complain when the Turks launched their massive invasion on August 14.

This apparent inactivity on the part of Secretary Kissinger and the U.S. Government, Tasca said, was very difficult for him to explain to the Greeks and made it very difficult for him to restrain Greek leaders from an all-out military confrontation with Turkey.

7. Tasca cannot explain why, during a period of great crisis over Greece, Turkey, and Cyprus, the State Department cut itself off from most of its expertise in this area by removing (1) our Ambassador to Greece, (2) the chief of the Cyprus desk, (3) the chief of the Greek desk, (4) the chief of the Turkish desk.

Mr. Tasca, after returning to the United States, was never consulted on Greece. Tasca is greatly disturbed by reports from unidentified State Department sources that Tasca had refused to see Ioannidis and that this refusal had unleashed the crisis culminating in massive human suffering on Cyprus, a narrowly averted war between the two NATO allies, and disastrously worsening relations between the United States and both Greece and Turkey.

Chairman PIKE. Mr. Boos, I think both in the interests of the committee and in fairness to Mr. Tasca we should establish a couple of things at this point. He did testify under oath in this regard; is that correct?

Mr. Boos. Yes, he did.

Chairman PIKE. And we have his full testimony transcribed; is that correct?

Mr. Boos. Yes, we do.

Chairman PIKE. Without objection, the full testimony will be included in the record. Some of it may be classified and some of it perhaps should be kept classified; but the rest of the interview will be printed in the hearing record.

[The interview referred to is printed on pp. 1520-1566 of the appendixes.]

Mr. Boos. Mr. Tasca made the point at various times during the interview that, despite what has been reported, he does not have a "sour grapes attitude" toward the State Department and he does not wish that his testimony be construed as such.

Chairman PIKE. I don't think there is a particular point in cross-examining our own staff; but if the members wish to ask any questions of our staff, I am not going to foreclose their doing so.

Mr. McCLODY. Where is Mr. Tasca now?

Mr. Boos. Mr. Tasca is now residing in Rome, Italy.

Mr. McCLODY. Do you know if he has plans to return here?

Mr. Boos. He is now engaged in private business. He may be returning to the United States later this month.

Mr. McCLODY. Did he indicate whether he would return if the committee wanted him to return?

Mr. Boos. Yes, he would be pleased to return, subject to his commitments, at the committee's convenience.

Mr. McCLODY. Did you gather that there was a sharp cleavage between Ambassador Tasca and the old strongman regime in Greece which prevented his having lines of communication with them?

Mr. Boos. Well, General Ioannidis—

Mr. McCLODY. Mr. Tasca had a strong hostility toward them. I know that myself because I remember talking to him about that. He detested the dictatorship that they had there.

Mr. Boos. Apparently, as dictators go, General Ioannidis was a particularly disagreeable fellow.

Mr. McCLODY. He didn't have very good lines of communication, I guess, with the old regime.

Mr. Boos. Mr. Tasca had dealt successfully with the previous dictator, Mr. Papadopoulos, but Mr. Ioannidis was apparently a particularly difficult man.

Mr. McCLODY. I would say, from my contact with Ambassador Tasca, he was a very skillful, dedicated, and very able representative of our country in a very difficult situation. I can understand that there may have been problems which limited his contacts, at least during this precoup period.

Mr. Boos. Mr. Tasca said, Mr. McCLODY, he would have dealt with Mr. Ioannidis; but Mr. Ioannidis had passed the word to him, through the CIA, that he preferred to deal only with the CIA, and Mr. Tasca took that at face value.

Mr. McCLODY. So, in a way, Ioannidis rejected contact with the Ambassador?

Mr. Boos. According to Mr. Tasca.

Mr. McCLODY. That is all.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Boos, first of all, given your testimony, we can conclude that the CIA, rather than the Ambassador, was in charge in Athens; is that correct?

Mr. Boos. The CIA dealt exclusively with the strongman in the Greek Government. There is no dispute that Ioannidis was really running things.

Mr. McCLORY. Would you yield for a point of clarification?

The strong man was not the Prime Minister—he was the man behind the throne; was he not?

Mr. Boos. That is right.

Mr. McCLORY. He was not in the government?

Mr. Boos. There was at this time a President of Greece, and a Prime Minister as well, but both were serving at the pleasure of Mr. Ioannidis.

Mr. McCLORY. Who was the nominal head?

Mr. Boos. The nominal head was President Gizikis; the Prime Minister at that time was Mr. Adamantios Androutsopoulos.

Mr. DELLUMS. You mentioned in the latter part of your statement that several persons were removed from the State Department. I noted that one of them was the chief of the Cyprus desk. Can you give me the name of the person who at that time was the chief of the Cyprus desk?

Mr. Boos. Thomas Boyatt.

Mr. DELLUMS. I might just point out, Mr. Chairman, it is interesting that Mr. Boyatt was one of the persons who made a very accurate prediction and gave a dissenting report.

Chairman PIKE. I would simply say to the gentleman, you are now, it seems to me, becoming the witness. We have never heard Mr. Boyatt say this.

Mr. DELLUMS. I was just going to point out that it is interesting that he lost his job as a middle-management person.

Mr. FIELD. Mr. Chairman, we could report on some testimony we have received from persons other than Mr. Boyatt. In fact, Mr. Boyatt and another person by the name of Mr. Bob Dillon combined to write a memorandum which apparently criticized the management performance of the intelligence community and the State Department during this period. Both were reassigned during the crisis. The source who gave us this information said they were the only two who had correctly predicted the crisis. In addition, the Ambassador to Greece, who was critical of the way things were being handled at that time, was removed from his position in Athens, and another fellow by the name of Mr. Day, who had been critical, was also reassigned.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. I might point out, Mr. Chairman, that given the equal burden doctrine I find it a contradiction that they are at this particular moment talking about preserving the integrity of middle management when they removed one of the two middle-management persons who we assume were very accurate in their predictions.

I would like to ask Mr. Boos this question: Given your presentation, the former Ambassador paints a picture of U.S. acquiescence in the coup. From your investigation into this matter, have you determined whether or not there was any direct U.S. involvement in the coup?

Mr. Boos. Mr. Dellums, I have to correct the record, or correct your impression here. Mr. Tasca did not conclude that there was U.S. acquiescence in the coup. He does not know. He could not know, because he did not have access to the one man in the Greek Government who unleashed the coup. He is puzzled by the fact that information was apparently kept from him. He doesn't know why that was.

He does say it was well known that he was against a Greek venture into Cyprus. For some reason, the U.S. Government may have chosen to deal around him.

Mr. DELLUMS. Thank you.

Mr. Field, would you summarize the picture and the performance of the intelligence community after this crisis?

Mr. FIELD. Yes, Mr. Dellums. I think it might be helpful to the committee because the post mortem is rather lengthy.

The post mortem paints what appears to be a mixed performance, in the sense that it cites a few successes and some failures. But I think it is important to look at the significance of the successes and the failures. It cites really two successes: One was a report, early on, that there might be a coup. The second was the prediction of the Turkish invasion of Cyprus.

As to the first success—that was in late June—there was an indication there might be a coup. As we have heard from Ambassador Tasca, that information was not even transmitted to the Ambassador in Athens and was not widely disseminated within the community. More important, we found out later that it was followed in early July by a clandestine CIA report from a new and untested source, which provided reassurances—in their words—that there would not be a coup. That report was the report that was believed. So in fact, in the weeks before the coup, there was not one single report in the intelligence community predicting a coup.

In fact, reports—including the one that I read from on the day of the coup—consistently provided reassurances.

I think this is important because the key event here was the coup. Once the coup took place, the invasion was somewhat inevitable.

Not only were there no reports; because of the reassurances, no national intelligence estimates were prepared. That kind of estimate was done from time to time whenever the intelligence community felt that an area of the world required some kind of special attention.

Mr. DELLUMS. What you are saying, then, is that they pointed out one of their successes was the prediction of the coup. There was such an intelligence report, but that report was not widely disseminated. However, other reports of clandestine activity that predicted just the opposite were widely disseminated—and that was the information upon which they operated.

Mr. FIELD. I would like to just continue through the other successes and failures.

They cite as a success the prediction of the invasion. In fact, the invasion—which was widely reported in the newspapers—included the fact that the ships that were moving toward Cyprus, and so forth. Two to 3 days before the invasion, it was widely predicted in the newspapers. The intelligence community's prediction did not come out until the day of invasion and, as is noted in the margin on the post

mortem, was not disseminated. The prediction never went beyond the National Intelligence Offices—the NIO—who brought it up.

Chairman PIKE. The time of the gentleman has expired.

Mr. FIELD. I think the prediction of the invasion was not terribly critical, because once the coup took place, that was inevitable. What was critical was the breakdown of the ceasefire in the weeks following the invasion. The post mortem states that during this period the performance of the intelligence community fell noticeably, due to the massive amount of material that comes in once you have any kind of military action. The community simply did not perform well in terms of the second phase of the invasion. It was that second phase and the Turks' breaking of the ceasefire line which led to the congressional ban on arms aid to Turkey, and so forth.

We had two failures: The failure to predict the coup and the failure to predict the second phase of the invasion. Those were two important events, and in both cases our intelligence failed. The success in predicting the first Turkish invasion was about comparable to the predictions in the newspapers at that time.

I would also like to state, in relation to the failure to predict the coup, that on July 6, the FBIS—the Foreign Broadcast Information Service—published and transmitted to the CIA a letter from President Makarios to the President of Greece, in which he accused the President of Greece of trying to kill him. He said he was going to remove the Greek officers from the Cyprian National Guard.

This is just one example of the kind of evidence that our intelligence was moving against when it said there would be no coup.

I have a copy of that letter. I don't want to quote from it now, since it is three or four pages long; but it gave a clear indication. We will submit it for the record.

[The letter is printed on pp. 1516–1519 of the appendixes.]

Mr. FIELD. The news releases on that, 9 days before the coup, came from three countries. The release from Athens went through a report of a planned coup against Makarios. It stated: "In the third and final stage they will attempt to overthrow President Makarios, promising socioeconomic reform to the people."

A news report from Nicosia stated: "The conspiratorial brains are planning a broad coupist action to take place in the next few days, supported by certain military circles in cooperation with the national guard and the EOKA-B unit for the purpose of seizing power."

That in fact is exactly what happened.

From Turkey, the third nation involved here, the lead paragraph read: "According to reliable sources, the disputes that have been going on in the Greek Cypriot sectors for a long time now have reached a critical stage recently. Some observers describe the current situation as a crisis unprecedented in the history of Cyprus."

The newspapers were predicting the coup.

The intelligence community in the United States was providing reassurances, which is, I think, what disturbed us most when we began to get into this.

Chairman PIKE. Mr. Treen—

Mr. TREEN. I want to get clear my own understanding on the point Mr. McClory was asking about. It was Ioannidis himself who decided he did not want to deal directly with Tasca; is that correct?

Mr. Boos. We don't know that. That is hearsay to Mr. Tasca.

Mr. TREEN. A lot of what you have told suggests hearsay.

Mr. Boos. Absolutely.

Mr. Tasca was told by the only link he had with Ioannidis—the CIA—that Ioannidis preferred not to deal with him. He had no independent, firsthand knowledge of that fact.

Mr. TREEN. Did he ever attempt to see Ioannidis himself?

Mr. Boos. No.

Mr. TREEN. Did Ioannidis have any official role in the government at all at any point?

Mr. Boos. No, sir. He was the "Gray Eminence." Mr. Tasca is very firm on that point. I think it is well known that Mr. Ioannidis ran Greece during that period—that the top officials of the Greek Government were installed by Ioannidis, served at his pleasure, and did nothing important without Ioannidis' approval.

Mr. TREEN. Tasca knew then that Ioannidis was the "Gray Eminence," as you put it, but he made no attempt to determine directly whether Ioannidis would see him or have contact with him; is that correct?

Mr. Boos. That is correct, sir.

Mr. TREEN. He chose to accept the CIA statement?

Mr. Boos. Yes, sir.

Mr. TREEN. You used the word "puppets" during your explanation. I think Mr. Tasca applied that term to the CIA agency. Was that his term or your term?

Mr. Boos. It is my term, and it is a descriptive term—not for the CIA people, but for the top officials in the Greek Government who were being manipulated by Ioannidis.

Mr. TREEN. You or Mr. Field can help me on this:

You referred to the summary of the intelligence items. The third one, the 15 to 20 July time frame. The summary states, "Intelligence provides explicit warning, including date."

You don't know if you are going to get into deleted items here or not; but would you tell me as much as you can about the nature of that explicit warning and who it went to, and whether this is the warning, Mr. Boos, that you are referring to? If I understood you correctly, there was an explicit warning that Ioannidis had stated, in effect, to CIA that he was going to engage in the coup, and that was not passed on to Tasca.

Mr. Boos. Yes, sir, it is. Excuse me. Are you referring, Mr. Treen, to the June item?

Mr. TREEN. I refer to the third item, "Intelligence provides explicit warning."

I am sorry, I beg your pardon. I am not referring to that. I am referring to the time frame in the first line and to your—what I thought was your statement that there was expressed word from Ioannidis also, to the CIA, that a coup was going to take place, and that was transmitted somewhere but not to Tasca. Did I misunderstand that?

Mr. FIELD. The explicit warning was that provided in June, which is the first line. That was later overruled by the clandestine report in early July. The information you refer to itself refers to the invasion.

Mr. TREEN. No. Let's go back. I misdirected your attention there.

Chairman PIKE. Mr. Treen, let me just suggest that as far as question relating to the post mortem are concerned, Mr. Field is the one to testify. Mr. Boos can testify as to Mr. Tasca's inputs.

Mr. TREEN. Either witness who can help me get this straight. I am not trying to cross-examine; I am trying to understand whether what you are telling us on a cumulative basis here is that there was an explicit report—from Ioannidis himself—that a coup was going to take place. Who was that report from, to whom did it go, and did that person transmit it to anyone else?

Mr. FIELD. That was a report in late June. Ioannidis himself told somebody in the CIA in Greece that he was planning a coup and asked what the United States would think about it.

Mr. TREEN. How long before the coup was that statement by Ioannidis?

Mr. FIELD. The coup was on July 15, and this was in late June.

Mr. TREEN. Did CIA transmit that to Washington?

Mr. FIELD. It was never disseminated to Ambassador Tasca in Greece. That is what Tasca referred to—that if he had heard of Ioannidis' statement, he would have turned everything upside down, and so forth.

Mr. TREEN. I think that is a critical area. At least it seems so to me. Is this one of the sources that had been deleted?

Chairman PIKE. Let's not take any chance on it.

Mr. TREEN. I don't want to do that.

Mr. FIELD. The source is Ioannidis. Ioannidis himself told CIA.

Mr. TREEN. Told someone in CIA. Have we the identity of that CIA individual?

Mr. FIELD. I believe we do. We were not able to talk to him during the blackout period when we could not get classified information. We have asked to talk to these people.

Chairman PIKE. The time of the gentleman has expired.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Let me get something straight. You say the key element here was the coup. Our CIA was getting information that the coup was going on—even a direct statement from a man who was going to participate in the coup. Yet our Ambassador was not given this information.

At the same time, the Turkish Government was preparing considerable troop movements about which our intelligence agency was also aware. This information, too, was not passed on to Ambassador Tasca. Is that correct?

Mr. FIELD. Mr. Murphy, I think that is basically correct. I would make an observation that the CIA did have information there would be a coup, but a few days later it received information there would not be a coup.

Mr. MURPHY. But we received information that the Turks were preparing for an invasion; correct?

Mr. FIELD. True.

Mr. MURPHY. Then our State Department was told that the coup was not going to take place, and yet the Turks continued their preparation. So one can only assume that their intelligence was better than ours. The Turks knew the coup was imminent. They were preparing for the coup. We were led astray on the matter. In fact, our Ambassador was not even told about it.

Mr. Boos. Mr. Tasca also told me that it has become his judgment that the Turks were preparing for an invasion of Cyprus in any event, even before the coup.

Mr. MURPHY. But they would have to have an excuse for it.

Mr. Boos. No, they didn't. His view was that they were going to take advantage of the deteriorating situation of the Greek Government.

Mr. MURPHY. It seems to me that the Turks had better intelligence than we did—or that we had the intelligence and did not act on it. The Turks kept preparing for an invasion with supplies, troops, staging areas, ship massing, et cetera. Our intelligence personnel kept warning us of the invasion. They knew the coup was coming. Maybe we knew the coup was coming and we purposely denied this information to Mr. Tasca. Does he feel that way?

Does he feel that the CIA and our intelligence people deliberately excluded him from receiving this information?

Obviously the Turks had it. Our intelligence had it because of the Turks' preparations in Turkey. Our intelligence people had it on Cyprus and Greece. Yet the man given the responsibility by the State Department was the only man without the information.

Mr. Boos. Mr. Tasca is left to conclude, from the information I imparted to him of apparent contacts with the CIA, that, yes, he was kept in the dark about this.

Mr. MURPHY. He obviously was, because the whole Turkish Army was preparing for an invasion. If you have ever had any experience with mounting an amphibious invasion, you know all the preparations that have to take place: The movement of troops, the movement of supplies, the gathering of the ships. Yet these preparations went on and never stopped.

Mr. Boos. Mr. Tasca agrees with you that the Turks could not have prepared an invasion within 5 days and concludes from that one of two things: Either the Turks had better intelligence than we did that a coup was about to occur—

Mr. MURPHY. That is exactly my question.

Mr. Boos [continuing]. Or they were going to invade anyway.

Mr. MURPHY. Or they knew we were not going to do anything to stop them as we had on two previous occasions.

President Truman sent a battleship and President Johnson sent a strongly worded letter. The conclusion I am left with—the assumption I have to make—is that with the invasion plans taking place in Turkey, with the CIA talking to the chief conspirator behind the coup on Cyprus, and our Ambassador left out of it entirely, our intelligence knew the invasion was coming and we deliberately denied the Ambassador this information. One might conclude further that we favored the invasion.

Mr. Boos. May I add one element here which may be of some importance?

Mr. MURPHY. Do you find any fault with that reasoning?

Mr. Boos. No, sir. It is a fair inference, I believe.

Mr. Tasca did tell me—and I think this is an interesting point—that just after the coup, when it appeared the Turks were up to something, he proposed that we interpose the 6th Fleet between the Turkish mainland and Cyprus to “show the flag,” as he put it.

Mr. MURPHY. This was a precedent we had established at an earlier date, is that correct?

Mr. Boos. Yes, sir. This suggestion was summarily rejected by Secretary Kissinger.

Chairman PIKE. I do think we are getting somewhat out of the realm of intelligence and into the realm of policy, although it is very interesting.

Mr. Boos. Mr. Chairman, if I might say this: I believe it has a direct bearing on intelligence because it apparently demonstrates that our intelligence is not being utilized properly.

Chairman PIKE. That is your conclusion based on your judgment that we should have sent the 6th Fleet in there. I am not sure that I would agree with that conclusion.

Mr. Lehman.

Mr. LEHMAN. Thank you, Mr. Chairman.

Let's get back to the main purpose of this whole select committee. We are trying to determine the cost of our intelligence, and we are trying to determine the quality of our product. Even if we had the quality of the product and it was top grade, if we don't use the quality of the product—as perhaps we did not use it in this case—what good does it do, in effect, to get the Cadillac if you don't know how to drive it? That, in essence, is the way we might end up with this.

So perhaps we may even extend the scope of this inquiry in light of this kind of situation where even if you prove you have a dollar for dollar quality in intelligence, if you don't use it when you get it, what good does it do you to have good intelligence?

Obviously, we knew somewhere along the line what was going to happen and we completely disregarded it.

There is one thing I am not quite clear on. One of you said that the key was the coup, and that in turn set in motion an irrevocable situation of a Turkish invasion. The other member of the staff said that the deteriorating situation in Cyprus would have caused the invasion regardless of the coup. Is this the kind of situation we cannot do a damn thing about anyhow? When we have a government such as Greece, and enosis, if enosis is a fact of life, and there is an attempt to consolidate Cyprus into part of the Greek Government and Turkey is adamant that this is not going to happen, then all the intelligence in the world is not going to prevent an invasion by Turkey. What was the real problem? Was it the deteriorating situation or a de facto coup that made this situation irreversible and continues to harass us in the halls of Congress?

Chairman PIKE. Mr. Lehman, I am not at all sure that our staff is any more competent to answer that question than you are. I don't really think that is a proper question to address to our staff—to ask them to say for the record what their judgments are.

Mr. LEHMAN. I will certainly agree with that. But I could not help but think that this is where the real problem is in this matter of subjective thought. I just wanted to get on the record that this is what does concern me.

Chairman PIKE. The committee will stand in recess until 10 o'clock tomorrow morning, when we will meet in executive session to start our evaluation of the risks involved in our intelligence-gathering operations.

[Whereupon, at 12:14 p.m., the committee was recessed to reconvene at 10 a.m., Thursday, October 2, 1975.]

U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

TUESDAY, NOVEMBER 4, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2154, Rayburn House Office Building, the Honorable Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaino, Dellums, Aspin, Hayes, Lehman, Milford, McClory, Treen, Johnson, and Kasten.

Also present: A Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, counsel.

Chairman PIKE. The committee will come to order. We have a couple of matters on which I would like to sort of share my views with the committee.

Mr. Dan Schorr, who shares membership on this committee from time to time, had a very interesting story on television last Saturday night. It was not exactly attributed to this committee as far as the source was concerned, but it was sort of attributed to this committee as far as the source was concerned—and I frankly don't know where the story came from.

It is possible that we do have a leak on this committee. It is also possible that somebody else who wants to make it appear that we have a leak on this committee did, in fact, provide the source or was, in fact, the source.

We met in this room last Friday, and when we came back to the room this morning, we found on the witness desk some notes which apparently were left here last Friday and have been here ever since; and I can only say that had the reportorial staff been acute, they might have found those notes interesting reading. They did not come from this committee or from this committee's staff. They came from the witnesses.

I have been rather proud of the work of this committee, and I am always bothered when something happens to discredit this committee; and I can only say that either someone on the committee or someone on the committee staff is seeking to discredit the committee, or someone outside of our staff or other than our members is seeking to discredit the committee. And I, very frankly, do not know who it is. I can only say that it bothers me greatly, and I am sure that it bothers most, if not all, of the members of the committee.

Mr. McClORY. Will the chairman yield?

Chairman PIKE. Certainly, Mr. McClory.

Mr. McCLORY. Mr. Chairman, I am happy you made the statement you did. I can't help but feel that there is absolutely nothing that would discredit this committee and its work more than—in violation of our rules and in violation of the confidence that has been placed in the members of the committee and the committee staff—to make public or to try to gain some favor with the media by violating the trust and confidence it has placed in us and in our staff.

I am hopeful, myself, that whatever did occur was not attributable to either any member of the committee or to any member of the committee staff, but was some other source; and I hope further that whether it was the committee or committee staff, or elsewhere, it will not be repeated. Otherwise, my only position would be to recommend that we do not receive material of a confidential nature if we cannot faithfully retain the confidence.

Chairman PIKE. Mr. Schorr, I don't suppose you would want to reveal your source or method at this particular time.

Mr. SCHORR. No, thank you.

Chairman PIKE. I thought as much. Mr. Milford?

Mr. MILFORD. Mr. Chairman, the release of classified information is a criminal violation of law. Will there be any type of investigation made either against members of the committee or the staff in this case?

Chairman PIKE. Well, frankly I don't think that we have a staff which is geared or qualified to do that sort of thing. I would not personally hesitate to ask the FBI to investigate this, if the committee thought that that was a desirable route to go, and, personally, I am very unhappy about the situation. I think the investigation might more properly be done not by the committee investigating itself.

Mr. MILFORD. In order to make a point, does the Congress have any sort of mechanism to carry out investigations within this body, itself, on matters of this nature?

Chairman PIKE. If it were a serious investigation, the answer would be no.

Mr. MILFORD. Thank you, Mr. Chairman.

Chairman PIKE. Mr. Treen.

Mr. TREEN. I would like to ask the Chair if it would entertain a motion at this time; and, if so, I will make the motion that Mr. Schorr be called by this committee in executive session to inquire as to the source of the story or the alleged story.

Chairman PIKE. I don't know Mr. Schorr, very frankly, but my guess is that Mr. Schorr is one of those reporters who would rather go to jail than reveal his source, and I think that that would be a relatively meaningless operation—unless, of course, you want to put Mr. Schorr in jail.

Mr. TREEN. Well, I think you are assuming—certainly I am not satisfied that Mr. Schorr might not be willing to provide the committee information as to his source. I think your guess is probably that he wouldn't, but I am not willing to be that critical of Mr. Schorr. He might very well be willing to—

Chairman PIKE. I am not sure I am being critical.

Mr. TREEN. And I would, therefore, Mr. Chairman, move that the committee, at an appropriate time, ask Mr. Schorr—I am not asking for a subpoena or anything like that, but ask Mr. Schorr to come before

the committee in closed session and testify on the subject of the chairman's remarks.

Chairman PIKE. Is there any further discussion on the motion?

Mr. McCLORY. Mr. Chairman?

Chairman PIKE. Mr. McClory?

Mr. McCLORY. I think even this subject is something that should be discussed in executive session. I would move to table the motion of my colleague, Mr. Treen.

Chairman PIKE. Mr. Dellums?

Mr. DELLUMS. Mr. Chairman, I just have one comment. I think that we ought to make an unqualified statement here. I don't believe that any member of this committee leaked that information at all, and I think we should stand on the record on that. We have been involved in a very important investigation to date, and I think that if this is the first time that a so-called leak has been attributed to—

Chairman PIKE. This is not the first time.

Mr. DELLUMS. I think that we are far ahead of the ball game; and at some point I think surreptitious activity is going to take place to discredit this committee. I think it is absurd for us to even continue to discuss the matter.

It is out there. I don't think any member of this committee was involved in it, and I think we have some important business and we should go ahead and address ourselves to those questions. I think for us to be involved in defending ourselves against a leak is an utter waste of time, and I think it is a trap and a pitfall.

We have an investigation to get on with, and I think we should get on with it. I think no one on this committee leaked that information.

Just one comment to your motion, Mr. Treen: I don't want to associate myself at all with a motion that would in any way attempt to harass, intimidate, threaten any member of the press. Mr. Schorr had a story. He has particular sources. He is not going to give those sources up. I was in a similar situation, and I never gave my sources. I don't think we should be involved in any way in raising those serious questions. I think we should forget about it.

I would support Mr. McClory's motion to table the matter, hoping it never comes up again.

Mr. TREEN. Would the gentleman yield?

Mr. DELLUMS. I yield.

Mr. TREEN. First of all, I want to make it clear my motion was not to suggest in any way a member of this committee—I share your feelings, Mr. Dellums, that no member of this committee was involved. So my motion should not be taken as suggesting that.

Second, it is not my purpose at all to intimidate any member of the press or any other person. Merely to ask a witness to come before this committee and testify should not be considered as intimidation.

I don't know what position Mr. Schorr or anybody else might take with regard to an inquiry as to an alleged leak. So I think we are jumping to the conclusion that there would be intimidation. We may choose to go no further with it if Mr. Schorr says he would not testify.

Mr. McCLORY. I move the question.

Chairman PIKE. The question is on the motion offered by Mr. McClory. All in favor, signify by saying aye.

[Chorus of ayes.]

Chairman PIKE. Contrary; no.

[Chorus of noes.]

Chairman PIKE. The ayes appear to have it, and the motion is agreed to.

This brings us to the next order of business, which is the question of what we do, if anything, about our failure to obtain a document which we subpoenaed. I think perhaps it would be best to have our staff comment first and then the matter will be open to discussion by the committee.

Mr. FIELD. Thank you, Mr. Chairman.

Mr. Chairman, I have a number of concerns which I would like to express on behalf of the staff with respect to the Kissinger subpoena and with respect to the testimony which we heard last Friday.

The first is that it is almost 3 weeks to the day now past the return date of the subpoena which this committee issued on October 1. It was returnable on October 15. The stark reality is that there has been no compliance with that subpoena.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1479-1480 of the appendixes.]

Now, we may ask why this is important. Last Friday, we heard about a number of problems that the State Department has, but these are problems as to how we use the information.

We have in the past negotiated with the executive branch as to how we use information, and we will continue to do so in the future. We have done this, for example, on the release of information that is classified.

But the issue is, and always has been, a question of access—the right of access by Congress to information that it needs—and that is in a legitimate mandate, in this case House Resolution 591.

The important thing is that Congress has a legally valid subpoena that is outstanding, and that has not been complied with. It is a reasonable subpoena. We have heard informally, and to some degree formally, what is in the information we have requested. It is a reasonable request. There is nothing in that that I know of that would be in any way defamatory or in any way unreasonable. It is necessary. It is information that pertains to a very, very important part of our investigation.

And the third point is that it is important information. And most important of all, it is supported by law. No law and no sound legal basis has been asserted by the other side—only problems. And it is my position that laws and the honoring of laws must be at the root of our work.

We could address the question of substantial compliance, but that isn't an issue because there has been no compliance. The only attempt has been to make us change our request—to change the form of the information that we want—and that is not relevant to the question of an outstanding subpoena that this committee has issued.

The stark reality, once again, is that Dr. Kissinger is and should be held in contempt of Congress. I recommend against twisting ourselves into pretzels to reach for some compromise, to distort our request beyond recognition, because it will do a disservice to parallel efforts that we must go forward with in this investigation.

I would cite two examples in this regard as far as parallel efforts that would be damaged by our failure to stand behind our subpoena.

The first is that there are other matters which we need which pertain to the policy which we heard debated last Friday. If we go through gymnastics to try and get something that appears to be culled out of the so-called Boyatt memorandum, we will not have solved the problems of Mr. Boyatt's personal testimony of Mr. Day's testimony. We will not have solved the problem of the masses of paragraphs that are deleted from State Department material that come before this committee on the issues that we are investigating. And that is probably as important as, if not more important than, the Boyatt memorandum, itself.

The second example I would cite is that the staff wants very much to go forward with this investigation. We have made a great deal of progress in building toward what we feel is an important issue, and that is the upper levels of command and control in the intelligence community. In order for us to be able to investigate these, we will need new subpoenas; again, important subpoenas, reasonable subpoenas, necessary subpoenas, supported by law.

Quite frankly, if the committee will not stand behind a subpoena which it has issued—which has not been complied with and will not be complied with until the committee changes its request and changes its ground rules—the staff is not optimistic about the chances for any additional subpoenas either being honored by the executive branch or being backed up by this committee. That is all I have to say.

Mr. Donner can comment on any issues as to whether there has been any form of compliance or substantial compliance.

Chairman PIKE. Before Mr. Donner does so, I want to read to the members of the committee a letter which I received at roughly 5 p.m. last night from the Secretary of State, dated November 3.

DEAR MR. CHAIRMAN: I very much appreciated the opportunity to meet with you and the members of your committee last week. The discussion was useful to me, as I hope it was to the committee.

Let me reiterate that my intention is not to withhold any information of use to the committee or to win a theoretical dispute, but to reach a compromise that protects the legitimate interests of both the Department and the committee. I remain as determined as ever to do everything possible to assist the committee in its difficult and important task. Having heard the concerns expressed by members of the committee regarding access to documents, I have given much thought to how we might yet find an accommodation that serves our mutual interests, and those of the Nation. In pursuance of that objective, I should like to propose that I provide the committee an amalgamation of State Department documents criticizing our Cyprus policy. This collection of material would include, interspersed among the other paragraphs and without any identification of authorship, the full contents of Mr. Boyatt's memorandum to me.

In this way the committee will receive the document it requests, while I will have been assured that Mr. Boyatt cannot be identified with any particular criticism or recommendation. And no precedents—either for the Congress or the State Department—will have been established.

I make this offer, Mr. Chairman, in the hope than an "amalgamation" will prove satisfactory to the committee; it is a solution that I can support without question. If this offer is acceptable to the committee, I will have the promised document in your hands within 48 hours of hearing of the committee's decision.

Sincerely,

HENRY A. KISSINGER.

I just wanted you to know that I have received that particular document.

[Secretary Kissinger's letter of November 3, 1975, is printed on pp. 920-921 of the appendixes of part 2.]

Chairman PIKE. Mr. McClory, you are the one who has always thought we were going to get this particular piece of paper, and I would like to hear your views on how we ought to proceed.

Mr. McCLORY. Thank you, Mr. Chairman.

First of all, I am little concerned about counsel going beyond the question of advising the committee as to the law and with regard to policy. I think that is something that the committee, itself, should undertake; and I would hope that the committee members would independently arrive at such a decision as far as policy is concerned.

In response to the statements made by counsel, I would like to point out that our effort here is not to try to get one branch of Government to heel to the demands of the other. Our effort is to secure information, and in that respect I have sought to secure cooperation from the executive branch. In connection with the dismissal yesterday of the CIA Director, William Colby, the principal reason appears to be that he has been too cooperative; he supplied too much information; he has gone beyond what he needed to do.

The subpoena, which I voted for, and which I think is a valid subpoena, nevertheless seems to me is being effectively complied with when the Secretary provides us with his letter that states "the full contents of Boyatt's memorandum" would be supplied to the committee.

Now, if the full contents of what we are asking for are supplied to the committee, I think we have all of the information that we are seeking; and that is what we are seeking—information. I would like to say that the law is not clear; the law is not clear at all.

I think that there is a distinction between the Boyatt memorandum and other statements that we might get from the State Department, and I have tried to make that distinction. I think the Secretary is correct in giving us the information.

Mr. ASPIN. Will the gentleman yield?

Mr. McCLORY. Yes, I am happy to yield.

Mr. ASPIN. I would like to state that I agree somewhat with the statement made by the gentleman from Illinois, and I would like to offer a resolution at this time.

Mr. McCLORY. Well—

Mr. ASPIN. Would you like to finish your statement?

Mr. McCLORY. I think I have finished, except to state that if there is additional information that we require, there is no reason why we can't act with regard to subpoenas; but if we get the information in response to that, I think the subpoenas have encouraged the supplying of information, and I am glad for that. I have been very interested in getting information from the FBI, and I think that following the request of counsel and a little pressure, we have gotten all of the information, or substantially all of the information, that we required. In other areas where we haven't been successful, why let's get it; but in this case it seems to me that we have what we are seeking.

We have the information, and on that basis I think that we shouldn't take this strong line and say, notwithstanding the fact that we have been offered the information, we are going to proceed, anyway. I think it would put us in an unpopular position.

Chairman PIKE. The gentleman from Wisconsin is recognized.

Mr. ASPIN. Thank you, Mr. Chairman.

I would like to offer a resolution, if I may.

Mr. Chairman, if I may read the resolution and then be heard in support, the resolution says:

Resolved by the Select Committee on Intelligence of the House of Representatives that an amalgamation of Department of State documents, to include in its entirety the papers described as the 'Dissent Memorandum' prepared by Thomas Boyatt while director of Cypriot affairs in the Department, fulfills the requirement of the subpoena issued by the committee on the 2d day of October 1975;

Provided the amalgamation is accompanied by an affidavit signed by a person mutually acceptable to the Department of State and the committee, as represented by the chairman and the ranking minority member, attesting that the aforementioned Boyatt memorandum is contained unabridged within the amalgamation;

Due to the unique circumstances surrounding the Boyatt memorandum, such amalgamation will be considered to satisfy the well-established legal rights of a duly authorized committee of Congress to have access to all documents of the executive branch within the purview of that committee's operations.

Mr. Chairman, when I got the Kissinger letter——

Chairman PIKE. The gentleman is recognized for 5 minutes in support of his resolution.

Mr. ASPIN. Thank you, Mr. Chairman. When the Kissinger letter that we all got copies of arrived last night, there were two points I think that came to my attention in reading it.

The first one is that he has made a significant concession following our meeting on Friday. The position that Secretary Kissinger set out to the committee in the letter which he sent dated October 14, you will remember, said that he did not want to give us the Boyatt memorandum for all of the reasons which he cited and offered instead a summary—in other words, somebody else's words about what Mr. Boyatt has said.

What he says in his letter now is that he is giving us the exact wording of the Boyatt memorandum, although it is not identified as the Boyatt memorandum and it is mixed in with other paragraphs of other pieces of paper.

That, I think, is a significant concession, and I think a very important one. I think that you can make the case that the Secretary is making a very good effort at coming to some kind of a compromise with the committee. I think that the committee is in a very, very difficult position to press the subpoena further.

To go to the floor of the House, telling our colleagues on the House floor that we have all of the information, but we don't have Thomas Boyatt's name associated with the particular paragraphs that he is talking about, I think will puzzle our colleagues. I don't think that we can argue in good faith that that is absolutely necessary for our investigation.

That is not absolutely necessary for our investigation, and I think that the Secretary has gone a long way toward accommodating us and toward making a compromise. I think it is a very good compromise which the committee should accept.

The second point, though, in reading the Secretary's letter, is the verification issue. Now I don't know whether that came up in the process of writing this letter—whether anybody thought of that over in the State Department. However, it seems to me not an unreasonable

position for the committee to take that if we agree to accept the Secretary's recommendations here—what the Secretary is suggesting—that he give us the Boyatt memorandum in an amalgamation of other pieces of paper; that we be sure that it is in there; and that we have somebody, namely, a person mutually agreed to by the Department of State and the committee—some noninterested party—have a look at the thing and attest and verify its accuracy to the committee that, yes, in fact the Boyatt memorandum is in there, in its entirety—all the words that Thomas Boyatt wrote are in there somewhere.

And if we have that, Mr. Chairman, and we have verification, I think it is a very good offer. I think we should accept it. I propose that we vote for the resolution.

[COMMITTEE NOTE.—Secretary Kissinger's letter of October 14, 1975, is printed on pp. 913–919 in part 2 of the hearings.]

Chairman PIKE. If the gentleman would yield, I would like to ask the author of the resolution a couple of questions: You say that all of the words of the Boyatt memorandum would be in this amalgamation.

Mr. ASPIN. Yes.

Chairman PIKE. Would the gentleman also say that the submission of a dictionary to the committee would be in compliance with the subpoena?

Mr. ASPIN. I don't think that is what is going to happen, Mr. Chairman.

Chairman PIKE. Well, what I am trying to find out is the form in which the words are going to be presented to us. I suspect that the Boyatt memorandum was in today's Washington Post, also, if you can find the words.

Mr. ASPIN. Mr. Chairman, may I point out a sentence in the letter from the Secretary: "This collection of material would include, interspersed among the other paragraphs and without any identification of authorship, the full content of Mr. Boyatt's memorandum to me."

It seems to me pretty clear that what they are going to do is take various paragraphs of the Boyatt memorandum and intersperse them with paragraphs from other memoranda. I think that is a perfectly acceptable way to proceed.

Chairman PIKE. Does the gentleman feel that if we are not familiar with, say, four or six documents, and all of the paragraphs of four or six documents were interspersed and mixed up like some sort of a magnificent jigsaw puzzle and there was no picture, we could elicit from those mixed-up paragraphs what we are trying to get?

Mr. ASPIN. I think with mixed-up paragraphs—the paragraphs being paragraphs—you could read that, and I could read that, and any member of the committee or staff could read that, and, in effect, get exactly what Thomas Boyatt was saying. Although he might start with a different point or end with a different point, I think the full content of what Thomas Boyatt was saying would be pretty clear from reading that document; yes.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Mr. Chairman, I would like to speak in opposition to the resolution. I don't think the issue is whether or not this committee obtains the information which is in the Boyatt resolution. In fact, if you will recall Secretary Kissinger's testimony last week, I believe he indicated we are going to be very surprised or disappointed

at what is or what is not in the memo. In other words, there isn't too much in it. That isn't the point at all.

The issue here is much more important than a one-shot settlement of this dispute involving the Boyatt resolution.

For years, many of us have been trying to get effective congressional oversight of the executive branch, and every time we get into a dangerous area with the executive branch—particularly in recent years—they have fallen back on all kinds of privileges, whether they are claimed or not, to refuse to provide Congress with the necessary evidence, testimony, witnesses, documents, and what-have-you. These are things we must have in order to ever begin to have congressional oversight—which I submit we have not had at all in the 28 years or 30 years of existence of the intelligence community.

In this present case they claim a privilege which the Secretary, himself, told us was not executive privilege; that he did not go to the President and ask the President to invoke executive privilege. Quite frankly, I am not sure that the President could claim executive privilege in this case because this matter deals with the Secretary of State and not with the President and the doctrine of executive privilege is a Presidential doctrine in itself. It is doctrine which has been expanded in recent years until the courts have come along and curtailed the Executive's claims in that regard.

I think it is important that we establish the principle here that Congress is asking for information for evidence so that it can begin to perform its function of congressional oversight. It may well be, as you say, that Congress is not willing to assume this task now. It may well be that we would lose if we were to go to the floor.

I tried to publicize the CIA budget several weeks ago in the defense bill, and all I could get were 147 votes. I submit to you, however, that is about 150 votes more than we would have gotten 2 years ago. Next year and the year after that, and the year after that, I hope we get the necessary 218 or 220. We will ultimately prevail if we keep pointing out the issue which is at stake and get the American people interested in these free-wheeling executive agencies which have no congressional oversight.

We may not prevail today, but this Government of ours has lasted 200 years by taking a long-term view and approach to these matters, and I submit that if we persist in the principle that Congress has the right to call witnesses and question what the executive branch is doing, we are on the right road. We will not have compromised ourselves as they are asking us to do, and we will ultimately prevail and the American people will be better off for it.

Mr. ASPIN. Will the gentleman yield?

Mr. GIAMMO. Yes.

Mr. ASPIN. I think what the gentleman is saying is right, and that is what makes this so difficult. The gentleman is making the right fight on the wrong issue.

The Congress will back this committee in its oversight; the Congress will back the committee if the issue is the correct issue.

Let me finish, and I will yield back.

But the issue has got to be right. The gentleman knows that the important thing in legislative affairs, and in any kind of affairs, is timing and picking the right issue. I have no doubt that there is no abso-

lute answer to the question, "Does the Congress want this committee to conduct a full and thorough investigation?"

Tell me the issue, and I will tell you whether the Congress backs it up; but to go to the floor and ask the Congress to back us up on this issue—the issue of a single name and document—I don't think we can make that case. I don't think we should argue it. We ought not fight on a trivial issue. If we are going to make the confrontation, it should be on something big. If we are going to go to the mat, it should be on something we can make the people understand, make the Congress understand, and win.

Mr. GIAIMO. I am not saying that we should make this the issue or necessarily go to the floor on this issue. But I am saying to you that if we accept your amendment we will have established a precedent for future actions where they will come in and offer us something less than the total evidence or the best evidence. I would not want to concede and create such a precedent for the future. Whether or not you want to make this an issue on the floor is another question entirely.

We may decide that it is not the best issue to take to the floor and merely state that, as far as we are concerned, we can't do our job effectively because the Secretary has not complied with our subpoena and leave it there; but I would rather do that than to compromise it out.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Mr. Chairman, I want to agree with my colleague from Wisconsin. I think the committee has to recognize the difference between information which the committee should have and the very unique set of documents called dissent memorandums, and one particular dissent memorandum that we are trying to deal with prepared by Thomas Boyatt.

The committee can get the information. We can get all the information we want. We have got to make the distinction between the dissent memorandum and information which this committee can have.

I agree completely with my colleague from Wisconsin when he says we should not go to the floor with a trivial issue because we will lose on it. We can have the information. If we are interested in the information, we have it. If we are interested in a confrontation, we have got that, too. By simply voting down this resolution, we can have it. I don't think the committee wants a confrontation, especially one that we can lose on—either a confrontation in the courts or a confrontation in Congress. We can have one either way on the floor of the House or in the courts.

The choice is ours, between a confrontation on a trivial issue, or taking the information which has been made available to us by the Secretary.

He has made a concession. He seeks not confrontation but cooperation. I feel that we have got to avoid the confrontation on an issue that we could lose on. Get off of this trivial, meaningless piece of information that is not going to make any difference to us anyway, and then go to the floor on an issue that is important—on information that is, in fact, being withheld.

This information isn't being withheld; it just doesn't come in the form that we wanted it. I think we have an opportunity here to avoid

a meaningless confrontation, and I would hope that we would support the resolution of the gentleman from Wisconsin.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

I would like to speak in opposition to the resolution for three rather specific reasons.

No. 1, I agree with my colleague that it is a bad precedent for it does in fact recognize secretarial privilege.

No. 2, without identification of a document one cannot (a) follow the facts, or (b) call upon the person responsible to testify if, in fact, it is necessary.

And my third reason is that the so-called or alleged threat of middle-level personnel is really a red herring, and it is on that point I would like to expand on for a moment.

I would take you back to Friday, when Secretary Kissinger testified before this committee. Virtually all of the reasons for not complying with the subpoena fell away in the testimony on Friday morning, with the exception of one point that was asserted by the Secretary—and that was protection of the so-called dissent channel. His major argument was that those middle-level persons would then begin to write memorandums of criticism or dissent in terms of how they would be read 2, 3, 5, 10 years from now. His thought was that they would not be forthcoming, that they would not express themselves in candor, but they would write memorandums in terms of how they would be read in the future.

One can then interpret that statement as meaning that middle-level persons in the Government would be responsible for writing memorandums that could, in fact, stand the test of time. Maybe I am naive, but I think that is the responsibility of Government. If the dissent memorandums cannot stand the test of time, perhaps it is because those memorandums were either incorrect, or fallacious, or perhaps because they alluded to potentially illegal acts that were dubious acts at best; so I think that, too, is a red herring.

I think if a dissent memorandum is written in 1975, it should be able to stand the test of 1984 or 1985; and so I think when one looks very carefully at the testimony of the Secretary, there is virtually no rhyme or reason for us in any way acquiescing.

So, Mr. Chairman, for those three very specific reasons I aggressively and wholeheartedly oppose the resolution by the gentleman from Wisconsin, Mr. Aspin. I don't think we should make this a precedent that establishes secretarial privilege. I think we need to have the documents identified so that we can call those persons if we need to. We can follow the facts if necessary. Finally, I think the dissent channel should be maintained—and be maintained in such fashion that when memorandums are written they can in fact stand the scrutiny and stand the test of time.

I think that the bottom line, Mr. Chairman—and I would just add this, to my colleague, when we talk about whether the Congress of the United States will support us—the question in my estimation is not whether the issue is safe or whether the issue is possible. The question is whether the issue and the stand we take is right; and I think that should dictate what we do, not the expediency of what the Congress does. If we think our position is correct, I think we should

advocate it—win, lose, or draw. That, it seems to me, is our responsibility, and I think it is at that level of integrity we should be operating. I think we should stand up to the Secretary of State. His compromise is totally unacceptable to us.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

I agree with several of my colleagues who say the legal rights of our committee are important. I agree with that. But, I think that is a different issue than faces us here. I think the issue that faces us here is how can we best get on with our work. We have a deadline to report by January 31, which means we really have to finish our hearings before Congress recesses for the Christmas holidays to give us time to prepare our report.

So I think that there is a case to be made for saying we need to establish our legal right, but I think that in trying to do that we may frustrate our goal and our higher purpose here. I agree with the thrust of the resolution by Mr. Aspin.

I would also point out that we can still call Mr. Boyatt, as I understand the resolution, and also the letter from Secretary Kissinger, as well as the Secretary's testimony the other day—we can still call Mr. Boyatt and ask him all of the things that I, in questioning, asked Secretary Kissinger if we could explore without any protest from him. We can get into all the factual information—the question of where Boyatt received information, the question of hearsay as to what he may have heard, the question of whether he was blocked out of certain information, unable to communicate with others; we can get into all of those questions with Mr. Boyatt, himself.

But I do raise one question, Mr. Aspin, with regard to your resolution. Referring to the last paragraph, I ask you how important that is to your resolution. You state in the last paragraph:

Due to the unique circumstances surrounding the Boyatt memorandum, such amalgamation will be considered to satisfy the well-established legal rights of a duly authorized committee of Congress to have access to all documents of the executive branch within the purview of that committee's operations.

I would feel more comfortable if that wasn't in, because it seems to me that if we vote for that, we may be then establishing the precedent that this does satisfy our rights; and accordingly, any other administration witness or official could come before us and say, "I will give you the information, but I will only give it to you in an amalgamation along with lots of other material," and he could say that there is a precedent for it—that this committee has voted on another occasion to say that an amalgamation satisfies the well-established rights.

I realize you have the words "due to unique circumstances." Nevertheless, I would feel more comfortable if we didn't go on record as saying that it satisfies our legal rights; and my thrust is that we should put the legal question aside. If we can get the information by which we can do our work, let's pass the legal question altogether. I think if you delete the last paragraph, then that would be helpful in that regard.

Mr. ASPIN. If the gentleman would yield, I have no particular desire to keep in that paragraph. What I was trying to do in that paragraph was to say what I think you are saying and other Members are trying to say: that we do not want to establish a precedent. What I was trying

to say is that these are unique circumstances. The Boyatt memorandum has a number of unique features about it which we would not want to establish as a precedent, and so the purpose of that paragraph is to say that we do not want to establish a precedent.

We can establish that very clearly with the legislative history here—the dialogue in the committee. If you want to knock the paragraph out, that is OK with me.

Mr. TREEN. I may have to take my time back so I can put that on the table and move the amendment to delete your last paragraph.

Chairman PIKE. At the proper time the gentleman will be recognized for that purpose, but I think maybe other members of the committee would like to be heard.

Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman. Most reluctantly I oppose the resolution. I also oppose taking any action against Secretary Kissinger at this time. I am very reluctant to take this position, because I do not agree with Dr. Kissinger's contention that he should be able to edit and spoon-feed information to this committee.

I agree with the majority of the members of this committee that we should be able to call any witness and obtain any document that might be germane to our investigation.

On the other hand, I do not believe that individual members of this committee, or staff members of this committee, or individual Members of this Congress, should have the right to release classified or sensitive information strictly on their own volition.

Mr. Chairman, just within the past 2 weeks, a Washington newspaper headlined a story that clearly revealed in vivid detail a very sensitive and highly classified matter that was taken up in executive session by this committee. The release of this information is clearly damaging to our foreign relations.

This was not the first time that classified matters have been leaked to the press by either members or staff of this committee, or individual Members of Congress. There is really nothing to prevent any one of us from unilaterally releasing information. Indeed, the House rules clearly give any Member of Congress the right to have access to any testimony we receive. No one is going to investigate a Member of Congress or a staffer after leaks are made. We are not going to call in the FBI or another competent investigative agency to investigate security leaks; and the Congress, itself, has no investigative body.

What I am saying is that the American people are not being protected. The Congress has not enacted proper rules nor established proper facilities and personnel to protect highly classified and sensitive matters. Until such time as these mechanisms are established, I would be opposed to forcing the administration to turn over highly classified or sensitive matters to this committee.

Mr. Chairman, I would oppose action against Dr. Kissinger at this time for another reason. I question whether or not we really need the Boyatt memorandum or other similar documents. All of us know there was a failure in intelligence concerning the Cyprus invasion. We also know there were failures in the Tet matter, in the Middle East, and others. Why do we need to keep plowing up more material that tells us there was a failure?

Instead of continuing to dig up more old dead cats, I would plead with this committee to shift emphasis. I would recommend that we direct our attention to examining the basic intelligence mechanisms and organizations that produced these failures.

Then we need to draft appropriate laws that will prevent the failures and abuses of our intelligence agencies in the future.

I recommend that we closely examine our own congressional organizations, rules, mechanisms, and procedures. Then we can make recommendations to the House for the necessary changes that will establish a permanent and responsible oversight committee on intelligence. In summary, Mr. Chairman, intelligence, by its very nature, is a highly secretive business. As the newspapers clearly reveal, individuals in the Congress or on this committee, or on this committee staff, have not acted in a responsible manner, and the American people have been hurt. I do not want to see that damage extended.

I violently disagree with Dr. Kissinger's contention that he and he alone can decide who and what this committee will examine. In voting against this proposition before us, I am simply seeking by the only means available at the moment to prevent further damage to our legitimate intelligence effort.

Once the House has established the proper mechanisms for responsibly handling highly classified and sensitive matters, I will then gladly join in an effort to see that the administration withholds nothing that would be germane to an oversight investigation.

Therefore, Mr. Chairman, I find myself in a difficult position. I agree with my friend from Wisconsin in what he is seeking in his resolution. However, I do not want to see a formal resolution passed by this committee on this subject because it would act as a bad precedent. Since the Secretary has already volunteered to give the same information in the same form as called for in the resolution, it is therefore unnecessary. Mr. Chairman, I move that the resolution be tabled.

Chairman PIKE. I ask the gentleman to withhold his motion so that all members may be heard on the subject. Mr. Lehman is going to be recognized next.

Mr. Lehman?

Mr. LEHMAN. Thank you, Mr. Chairman.

If I were the Director of the CIA, the FBI, or the IRS, or even the DIA, and if I were concerned about this investigation of our intelligence agencies, I couldn't have created a better defense from it than the Boyatt memorandum, because even the 5 minutes that I am taking here today is delaying this committee's investigation of something that to me is a lot more important, and that is for example, the procurement policies of our intelligence agencies.

I think that we are getting very far diverted from what I expected this committee to investigate, and that is the cost, the abuses, and the risks of our intelligence community. If we were a standing committee and had no time limitations, then I think it would be a different matter. Perhaps there could be a separate investigation into the State Department's internal problems.

But if we become bogged down in a battle over the Boyatt memorandum, and we are diverted from the essential investigation into that for which this committee was created, then I think that we are going to win a poor victory. Maybe we will win the battle with Dr. Kissinger,

but we will lose what I think the real intent and priorities of this committee are supposed to be, and that is what I would like to see this committee get on with.

And I am even concerned about the 5 minutes I took in order to mention all this kind of action.

Chairman PIKE. I will say to the gentleman, no one is ever required to use his 5 minutes. That is not one of the regulations that the committee operates under.

The Chair would like to express his own views before we vote.

We started, as far as the Chair is concerned, on the 17th of July with a reconstituted committee. I think we have come a long, long way. We started on a very noncontroversial issue, looking at money, looking at the dollars, and where the dollars went. We moved from that to a more controversial issue, and that is the results which we get from our dollars. And we moved from that to a more controversial issue, and that is the risks that are involved in some of our operations.

It was very obvious to me that as we proceeded, these issues were going to get increasingly controversial and we were going to get increasing pressure.

There were 122 Members of the House who did not want this committee reestablished in the first place, so we started with a great deal of opposition to our operations at all. One hundred twenty-two Members thought we shouldn't do anything.

We have tried to operate responsibly under our jurisdiction.

Now, as the debate on the creation of this committee progressed, it was entirely about the wrongful acts of the CIA; and what we have learned since is that the CIA was no rouge elephant. The CIA was not going out on its own, authorizing projects and carrying projects out. The CIA was not a runaway.

What we found was that the special assistant to the President had, himself, approved every single operation—whether the CIA wanted to do it or not; whether the State Department wanted to do it or not—and when we called this to the attention of the Special Assistant to the President for National Security Affairs, we finally got the word that the President, himself, had approved every one of these projects.

If we have done nothing else, we have established ultimate responsibility for everything that went wrong.

Now I hear that this is not the right issue on which we should go to the House of Representatives. I would submit that the issue is the right of Congress to get information. What I fear is that the conclusion has been reached by a lot of our Members that this is not the right man to go after—not that it isn't the right issue.

There wasn't any reluctance to go after William Colby on a subpoena. There is a great deal of reluctance to go after Henry Kissinger on a subpoena.

Mr. ASPIN. Will the gentleman yield?

Chairman PIKE. Not at this point.

What we have here, as we have just observed, is a man stripped of his job allegedly because he told Congress the truth. What we are confronted with is whether we are going to participate in a process which allows another man to withhold the truth from Congress.

All of these issues which were first debated as if the CIA alone were doing all of these things, we now find have risen to a higher level

of responsibility. When we voted for the subpoena we did not consider it, as some members now consider it, to be trivial, unimportant, and meaningless.

I think we are rationalizing when we assert that we have a legal right to this information. I am not overwhelmed by the assertion "if we are unwilling to enforce our legal right." Principles are like muscles. If you don't use them, they wither and they atrophy, and they disappear.

I personally am not going to vote for this resolution. I am opposed to the resolution. We have subpoenaed a document. We are offered a puzzle. We have subpoenaed some facts. The offer comes back, "we will put the facts in a blender and you can sort them out for yourselves." I personally am going to vote "no." I am not going to participate in choosing anybody to verify that all of the words are in this amalgamation. I would certainly take Mr. McClory's word for it, if Mr. McClory wants to proceed in that manner. But this particular Congressman is neither going to participate in the denial to Congress of facts in a meaningful context, and this particular Member of Congress is not going to participate in anything which in my judgment erodes the oversight of this committee and erodes the right of Congress to get facts.

I will go further and say I don't see any sense in our ever subpoenaing any other documents from the Secretary of State or documents which were in his possession as Special Assistant to the President for National Security Affairs.

Before we vote on this, I want you to know what else we haven't got.

I came aboard this committee on July 17. On September 18 I wrote to the Secretary of State requesting not just the Boyatt memorandum, but a great number of documents pertaining to the Cyprus invasion. The documents which came back were, to use their words, "excised." They were excised to the extent that once again they were relatively meaningless to the committee. A document which was from the American Embassy in Cyprus to the Secretary of State had a whole paragraph—15 lines—removed on the ground that it was a "policy recommendation." This is from the American Embassy in Cyprus to the Secretary of State on June 17, 1974.

[NOTE.—The September 18 letter is printed on p. 895 of part 2.]

Another paragraph, 11 lines, was described as "policy guidance." Another paragraph, six lines, was described as "policy guidance." A document from the American Embassy in Greece to the Secretary of State, June 24, paragraph 8, six lines removed—"policy recommendation." Paragraph 9, 10 lines removed—"policy recommendation." Paragraph 10, six lines—"policy recommendation." Paragraph 11, 10 lines—"policy recommendation."

On August 10, 1974, the Secretary of State to the U.S. mission in Geneva regarding the Cyprus situation, paragraph 3, 13 lines—"instructions to Embassy." Paragraph 4, three lines—"instructions to Embassy."

And so it goes, through a whole litany of information about the Cyprus invasion, about the Cyprus coup and the Turkish invasion of Cyprus, including one particular excision which they said was four lines and which appears to me to be 2½ pages.

Now, I will be happy to yield to the gentleman from Wisconsin.

Mr. ASPIN. Thank you, Mr. Chairman.

Mr. Chairman, it took 6 months on the House Armed Services Committee for me to get the committee chairman in such a state that he was talking gibberish. I think I have accomplished that here in 3 months. The points you mentioned are not relevant to the committee. The Chair talks about the case of Mr. Colby and how we were willing to take on Mr. Colby, but we were not willing to take on the Secretary of State. The point is we had a better case with Mr. Colby. We were asking for a whole series of documents. So we passed a resolution of necessity and we had a good case for a resolution of necessity before the House.

We would have won that on the floor of the House because wholesale pieces of paper were being denied the committee. What we are talking about now is the single name on a piece of paper. We have the contents of the paper. All we are talking about is the single name. It is going to look trivial to our colleagues.

The gentleman talks about all the rest that is being denied this committee, "policy recommendations"—the point being that if we had the subpoena against those, we would have a good case. But the subpoena applies to just getting the name of Thomas Boyatt. That is what the subpoena asks for. If the gentleman would like to make a motion that we issue a subpoena for the information that he has just outlined, I think we would pass it. We would be in favor of that. I would certainly vote for it.

Chairman PIKE. Did the gentleman vote for the last subpoena we issued that we are discussing today?

Mr. ASPIN. Absolutely.

Chairman PIKE. But you don't want to enforce it.

Mr. ASPIN. As I thought about that, I thought that what we were doing was the wrong thing. I did not realize at the time that it was a part of the dissent memorandum. I did not realize several other things about it. I do think that we ought not to enforce that subpoena. But I do think that we should enforce other subpoenas. To say that we should never issue another subpoena is just not true. We also have to point out the fact that the gentleman says we are treating Secretary Kissinger specially by letting him get by. I think we are treating Secretary Kissinger specially by sticking it to him if we approve for the subpoena.

Remember, in the information we finally accepted in resolution of that resolution of necessity against the CIA Director, Mr. Colby, we finally accepted that with 50 deletions in 12 instances.

Chairman PIKE. No, 50 words.

Mr. ASPIN. All right, 50 words.

We are now getting the information from the Secretary of State with deletion of two words—namely, Thomas Boyatt.

Chairman PIKE. Well, I wouldn't characterize your comments the way you characterized mine, but I will say that I disagree with your conclusions.

Mr. McClory.

Mr. McCLORY. Mr. Chairman, I want to agree with you, in the need for this committee to receive information from the executive branch. But I want to point out that I think I have been just as vigorous in seeking information as you have, Mr. Chairman. Now I have not been as insistent on trying to enforce subpoenas which presumably involves

enforcing them through the courts or through the exercise of the authority of the House Sergeant at Arms or something of that nature. I think that that would lead us down a very, very dangerous path and would lead us toward a confrontation that I think under all circumstances we should try actively to avoid. But I have gone, with you, Mr. Chairman, to the President of the United States to secure cooperation of the executive branch. It seems to me we have received a high level of cooperation. We have received a great deal of information.

As I indicated, the attack against Mr. Colby as head of the CIA is that he has been too forthcoming with too much information to committees of the Congress. I know that it is this administration that is involved insofar as the Cyprus situation is concerned and I hold no brief for this administration or any prior administration. I think that the work that the other body is doing, and the information that they may be about to release with respect to assassinations, is going to involve another administration; and it is going to involve material that they have been able to receive only after a great deal of effort.

Now I would certainly like to emphasize the trivial nature of this subject is not the trivial nature of the Boyatt memorandum but the trivial distinction of the Boyatt memorandum in the form of amalgamation verified or in receiving the memorandum with the name of Mr. Boyatt attached to it. I have used all of the persuasion I possibly could to try to get the Secretary of State to deliver the memorandum to us; in fact, even with the name deleted.

He has offered this alternative of having it combined with other dissenting material. It seems to me that since we will have the full text, it is not going to be a jumble of words. It is going to be in the form of paragraphs, I know.

I don't want to attribute any deceitfulness or anything of that nature insofar as the Secretary of State is concerned. He is trying, I think, sincerely to protect his department, his Agency, and particularly those middle-level staff people who do not want to have their individual dissenting views or majority views disclosed to a committee.

Chairman PIKE. Would the gentleman yield?

Mr. McCLORY. I will be happy to yield.

Chairman PIKE. Do you think it is this concern over these middle-level people which has caused the excisions in the messages from the State Department to the Greek Ambassador and to the Ambassador in Cyprus, and from the Ambassador in Greece?

Mr. McCLORY. No; speaking specifically to the Boyatt memorandum, it is the middle-level officers with whom the Secretary is concerned there. With respect to the other excisions, I am not too familiar with them, but I know that if they involve diplomatic exchanges or if they involve identities of individuals—

Chairman PIKE. This is our Ambassador talking to our State Department. This is our State Department talking to our Ambassador.

Mr. McCLORY. Mr. Chairman, I would not want to say that I would not support a subpoena to get that additional information. I'm not familiar with the details as to what the excisions are. I think we should demand that the information which does not disclose sources or identities of individuals or diplomatic exchanges—that that information

should be furnished as well as the full information contained in the Boyatt memorandum which I understand we are receiving. It seems to me to go forward and try to enforce a subpoena and to have it debated on the floor of the House and go to the courts with this kind of situation would really be an unfortunate step for this committee to take. Consequently, I am going to support the resolution of the gentleman. I would like a paragraph added which would indicate that this is not to be interpreted as a precedent in any sense at all.

I think it is a unique situation.

Chairman PIKE. Are you making a motion for such a paragraph?

Mr. McCLORY. I understand that one will be made, Mr. Chairman.

Chairman PIKE. Mr. Dellums?

Mr. DELLUMS. I just wanted to ask Mr. McClory a question: You alluded just a moment ago to the issue of protecting middle-grade State Department officials. If you recall the statement by the Secretary on Friday, he stated that he is clearly aware that this committee is not out after junior grade personnel. In fact, he categorized his concern in very specific terms. He said, in effect, "It is my concern that members of our staff will begin to use the dissent channel in terms of how their memorandum will be read in the future." It is my assertion that they ought to be concerned about how the memorandum is read in the future. So, when you talk about protection of junior grade officials, I think it is important to narrow down in rather specific terms the concern that he had, and make a decision whether you agree or disagree with that assertion.

Mr. McCLORY. I do not want these middle-level people to be restrained in any way from giving their advice, however popular or unpopular it may be.

Mr. DELLUMS. I think all of us have to make judgments. I don't believe this act will in any way intimidate middle management persons from giving their best view of a situation.

Mr. McCLORY. I don't think so, but I think the resolution will satisfy the committee in its need for information.

Chairman PIKE. I think that everybody understands the issues. The question occurs first on the motion by Mr. Treen, as I understand it, to strike the third paragraph of the resolution.

Mr. TREEN. Mr. Chairman, I do have a little change in that.

Chairman PIKE. The gentleman is recognized.

Mr. TREEN. I would like to make a unanimous-consent request with regard to the resolution to eliminate the third paragraph beginning with the words, "Due to the unique circumstances," and substitute therefor the following words: "The adoption of this resolution shall in no way be considered as a precedent affecting the right of this committee with respect to access to executive branch testimony or documents."

Chairman PIKE. Is there objection to the unanimous-consent request? The Chair hears none. Without objection, it is so ordered. Is there any discussion of the amendment offered by the gentleman from Louisiana, Mr. Treen?

All those in favor of the amendment signify by saying aye.

[Chorus of ayes.]

Chairman PIKE. Contrary, no.

[No response.]

Chairman PIKE. The ayes have it and the amendment is agreed to. The question next occurs on the motion by the gentleman from Texas, Mr. Milford, to table the resolution. The resolution has now been amended, Mr. Milford. Do you still wish to make your motion to table?

Mr. MILFORD. Yes; Mr. Chairman, in view of the fact that we have voluntary agreement from what the resolution calls for. My concern is that a formal resolution, regardless of its contents, still sets a precedent.

Chairman PIKE. The question is on the motion of the gentleman from Texas to table. All those in favor of the amendment signify by saying aye.

[Chorus of ayes.]

Chairman PIKE. Contrary, no.

[Chorus of noes.]

Chairman PIKE. The Chair is in doubt. The clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Aye.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. No.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. No.

The CLERK. Mr. Lehman?

Mr. LEHMAN. No.

The CLERK. Mr. McClory?

Mr. McCLORY. No.

The CLERK. Mr. Treen?

Mr. TREEN. No.

The CLERK. Mr. Kasten?

Mr. KASTEN. No.

The CLERK. Mr. Johnson?

Mr. JOHNSON. No.

The CLERK. Mr. Chairman?

Mr. ASPIN. Mr. Murphy votes "no" by proxy.

Chairman PIKE. Mr. Stanton is "aye" by proxy and the Chair votes "aye."

By a vote of 5 ayes and 8 nays, the motion to table is not agreed to.

The question is on the resolution offered by the gentleman from Wisconsin, Mr. Aspin.

I think it is of sufficient interest that perhaps we had better have a rollcall vote on it. The clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. No.

The CLERK. Mr. Stanton?

Chairman PIKE. "No" by proxy.

The CLERK. Mr. Dellums?

Mr. DELLUMS. No.

The CLERK. Mr. Murphy?

Mr. ASPIN. Mr. Murphy votes "aye" by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford?

Mr. MILFORD. No.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. McCLORY. Aye.

The CLERK. Mr. Treen?

Mr. TREEN. Aye.

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Chairman?

Chairman PIKE. No.

By a vote of 8 ayes and 5 nays the resolution is agreed to.

The implementation of the resolution is going to, as I read it, involve some work by somebody. I would only state to you, Mr. McClory, that I have absolute faith that you will get some disinterested person to certify to the committee that somewhere in an amalgamation to be received by the committee are all of the words of the Boyatt memorandum.

Mr. McCLORY. Thank you, Mr. Chairman, I shall. I think the words will be in understandable form. Thank you.

[At this point the committee proceeded to its scheduled hearing on CIA procurement practices, which is permitted in part 5 of the hearings.]

U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

THURSDAY, NOVEMBER 6, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2118, Rayburn House Office Building, the Honorable Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; and Peter L. Hughes III, counsel.

Chairman PIKE. The committee will come to order.

We do not have a witness this morning because Mr. Colby is testifying before a Senate committee. He is unpacking his bags and will be here at 2 o'clock this afternoon, at which time we will start in open session on the subject of possible CIA use of our media. How far we will be able to go in open session, I do not know.

It is my understanding that Mr. McClory has some business he wishes to bring before the committee, and I am happy to recognize him at this time.

Mr. McCLORY. Mr. Chairman, the so-called Boyatt memorandum has been received in the amalgamated form. I believe, in the committee's office. I haven't had a chance to study it myself, but it is there and it is available for review by the staff and by the members. It is accompanied by an affidavit from Boyatt attesting to the fact that his memorandum is contained in the amalgamated material. It is all classified.

Chairman PIKE. What is the degree of classification?

Mr. DONNER. Secret, Mr. Chairman.

Chairman PIKE. Do we have any knowledge of how it was put together?

Mr. FIELD. Mr. Chairman, I don't believe we do. Perhaps Mr. McClory could address himself to that.

Mr. McCLORY. I have asked Mr. Hyland how it was put together, and as he explained it to me it contained the entire Boyatt memorandum. In general, it is contained in parts. In some instances there are other materials from other memorandums contained in a paragraph. Some of it was rearranged to make it chronological. As I understand it, the Boyatt memorandum was not always chronological.

I understand there is some narrative added for the purpose of making it understandable and coherent. Otherwise, no material was inserted which is purported to have been prepared earlier than was prepared for this purpose.

It looks to me as though it is a helpful and useful bit of information for us. However, I just think it bears some careful study before we are either completely satisfied with it or can make a general criticism of it.

The same explanation of it was given to Mr. Aspin as was given to me. Perhaps I should yield to him for a comment about it.

Mr. ASPIN. Thank you, Mr. McClory.

It looks all right to me, too, although I have just glanced at it. I don't know how it looks when you read it through carefully, but the paragraphs are paragraphs and, in most cases, the Boyatt paragraphs are maintained as paragraphs.

Chairman PIKE. How do we know that?

Mr. ASPIN. That is what Mr. Hyland said. Mr. Boyatt's affidavit attests that everything he wrote—every word that he wrote—is in here somewhere. There were two exceptions and he pointed those out in his affidavit.

Chairman PIKE. Do you mean that the things he wrote are not in there or that the things he wrote are embellished somehow?

Mr. ASPIN. What he wrote is in there. Things he did not write, but which were written by other people, are also in there; but there is nothing that he wrote that was left out.

Chairman PIKE. How about material which was neither what he wrote nor what somebody else dissented to, but is somebody else's recently written dissent? Is there anything like that in there?

Mr. ASPIN. Apparently there is. It is not written as a rebuttal but as an introduction. For example, the opening paragraph is a brief introduction to the subject which was written just recently.

I think it is very hard to make a judgment until you read the document and I haven't even read the document.

Chairman PIKE. Is there anything else?

Mr. McCLORY. Mr. Chairman, I know the staff has prepared a number of subpoenas, together with reasons for issuing them. I am not certain I want to move the issuance of all of these subpoenas, but I think it is appropriate that we have an explanation of the need for them by the staff. I do want to affirm that I want this committee to get all of the information that we require and that we deem necessary for our investigation.

I would just like to add that I would hope that we are getting down toward the end of the road as far as getting information is concerned. I would hope that these subpoenas would lead us toward a conclusion of the investigation. I say that merely because I know that we want to conclude the committee's hearings and work, I assume, by the end of the year. That leaves us a month to prepare our report and to consider it. If there are any additional views—minority views or whatever—we will have a chance to do that.

Chairman PIKE. To whom are the subpoenas to be addressed?

Mr. McCLORY. I think the staff could assist us by explaining what they regard as their needs for additional information, and the rea-

sons we need it. I would suggest Mr. Field take them up seriatim. I think there are seven of them.

Chairman PIKE. Mr. Field.

Mr. FIELD. We have put together seven subpoenas which we as a staff feel we would like to have issued by the committee. They deal primarily with the national security level of responsibility—materials that we feel are necessary in order to determine—

Chairman PIKE. When you say "national security level," do you mean the National Security Council?

Mr. FIELD. National Security Council; that is right, Mr. Chairman.

These materials are necessary to determine who runs such things as the CIA and how these decisions are made.

The first subpoena we have would be issued to the Assistant to the President for National Security Affairs and—

Chairman PIKE. Who at the present time is the assistant to the President?

Mr. FIELD. I believe the subpoena would still be directed to Dr. Kissinger because General Scowcroft has not been sworn in yet; but it will be directed to the office, so it really makes no difference who is occupying the office.

The subpoena would be for all 40 Committee records of decisions taken since January 20, 1965, reflecting approval of covert action projects.

The reason for the subpoena is that we would like to see the minute for this period. "The minute" is a word of art. It is really a one or two paragraph statement authorizing covert action projects or programs, and by seeing who signs off on what type of project, and the type of projects that have been approved over the years, we may be able to determine whether there is a pattern which would distinguish the covert action projects which come from the President down from those which come from the CIA up, or from the State Department up.

The only way we can do this and also see the degree of information which is provided to those who make these decisions is to see the actual documents.

Mr. MCCLORY. Mr. Chairman, I move the—

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I have a question on that.

You say you only want those minutes which have been approved. Why don't you want those that may have been disapproved? We ought to find out whether or not they ever disapproved any actions that were recommended from other sources. Why haven't you wanted to get those?

Mr. FIELD. From our interviews with people who have served primarily on the National Security Council and some people who have served on the 40 Committee, it doesn't appear there have ever been any disapprovals. In other words, these things are usually worked out ahead of time, and this is something of a pro forma decisionmaking process.

Mr. JOHNSON. You are saying there have been no disapprovals since 1965?

Mr. FIELD. To the best of our knowledge, there have been no disapprovals at that level.

Mr. JOHNSON. You are satisfied that that is the case and that is the reason you are not asking for anything further?

Mr. FIELD. To the best of my knowledge, that is true.

Mr. McCLORY. Mr. Chairman, I move that the committee issue the subpoena.

Mr. Chairman, I know you have requested this information. It seems to me one of our responsibilities is to determine whether or not the mechanism which the Congress has established, and which is implemented by Executive orders, is being complied with.

I think we have some evidence here that the 40 Committee has been circumvented with regard to some covert operations. We should determine what they have approved and what they haven't approved, because it is essential that we have that kind of information if we are to make an intelligent report.

Chairman PIKE. I agree with you, but I would like to know a little more about it. When is it to be returnable?

Mr. FIELD. I believe the subpoenas are returnable next Tuesday, which is the 10th of November—the 11th of November.

Chairman PIKE. It seems to me that the testimony of the administration has been that the 40 Committee is a creature of the President. The President can use or ignore the 40 Committee if he wishes to do so.

I would not be greatly shocked if the allegation were made that these items were protected by Executive privilege. I would like to ask the gentleman from Illinois what he would propose to do if the information is denied to us?

Mr. McCLORY. Until that assertion is made, I wouldn't know what to do. I would like to know, first of all, whether or not Executive privilege is going to be raised and I would like to know the reasons for it.

As I understand the 40 Committee, it is a mechanism which involves decisionmaking by that committee, and not just a Presidential action.

All that this subpoena seeks to do is to determine which covert activities were authorized by the 40 Committee and then we would know which ones were not. At least we would know—

Chairman PIKE. We wouldn't know which ones were not. We would only know which ones were.

Mr. McCLORY. We would know that some were not, unless the 40 Committee authorizations included all the covert operations that we have investigated.

Chairman PIKE. I have no difficulty whatsoever agreeing with the gentleman that we need the information and that we should have the information.

Once again, I fail to share the gentleman's congenital optimism that we are going to get the information, and the question becomes: What are we going to do if we don't?

I personally have a certain reservation about signing subpoenas on behalf of the committee if, after the items are subpoenaed and the items subpoenaed are not delivered, we are not going to do anything about it.

I would be happy to join the gentleman in support of the subpoenas if I could get some assurance from him that, if the items are not delivered, we are going to do something about it.

Mr. McCLORY. Well, Mr. Chairman, the request for this information originally came from a member of our staff. Subsequently, you wrote a letter—

Chairman PIKE. I have requested the information; absolutely.

Mr. McCLOFFY. You requested that the information be furnished to a member of the staff. I would assume that if, in response to the subpoena, the information was supplied to the staff and the staff was satisfied, after examining the information, that under such circumstances we might not want to say that they physically have to deliver the records to this committee.

So I don't think that you can speculate on what may occur following the issuance of the subpoena, but this would indicate formal action on the part of the committee that we want that information and we feel we need that information for purposes of our investigation.

Chairman PIKE. It does seem to me that when I asked for the information—as Chairman of the committee, on the committee's behalf—we indicated that we needed it. You are now indicating that we should subpoena it. I would agree with you if I thought we were going to stand firm if we don't get it.

My question is not what we will do if we get it. My question is what we will do if we don't get it.

Mr. Johnson?

Mr. JOHNSON. Mr. Chairman, it is not clear to me what response you received to your request.

Chairman PIKE. None.

Mr. JOHNSON. You didn't even get an acknowledgment that you requested it?

Chairman PIKE. I guess we got an acknowledgment.

Mr. FIELD. I think we can add a little bit to this.

In response to your request, we did receive summaries of information. They were, frankly, worthless because they were sanitized to the point where even if we showed them to people serving on the 40 Committee, they could not identify what they had done.

There is another point. The staff feels we should be able to enforce this subpoena under all conditions because executive privilege—which is one of the few things you would watch for in this case—has been waived. We have received, verbatim, original 40 Committee minutes in a few instances.

Chairman PIKE. I think you could only say it has been waived in those instances in which we have received it.

Mr. FIELD. Certainly I would feel the executive would have a difficult time maintaining there was a distinction between those instances and other instances. Either executive privilege applies or it does not apply. I don't think they could distinguish upon the event.

Chairman PIKE. I would like to hear from the other members of the committee on the subject.

Mr. DELLUMS. I appreciate the comment you have made and the question you have raised because I think it goes to the heart of the matter. I think we are in a situation where the staff has much more courage than this committee. I think the staff at this point is much more diligent than the committee. I am inclined to agree with you that it doesn't make sense for us to sit here and issue all these subpoenas and then do nothing when they say no. We all realize they often do say no. We have had extraordinary experiences with the administration saying no. I have sat here with you, Mr. Chairman, and watched the majority of this committee back away from important principled

confrontations with respect to the request and receipt of information. I think an unsupported subpoena is a frivolous act and I think your question is well taken. I don't think it should simply be directed to the distinguished ranking minority person. There are many members on our side of this aisle who have backed away from confrontation. I would add that I personally am greatly disappointed.

I think we have an awesome responsibility. There are some critical, critical problems, and this is not a smalltime ball game. This is an important set of issues where life and death have hung in the balance on some of these absurd and insane projects. It is tragic for us to assume the responsibility to investigate, issue subpoenas all over hell and back, and then when they say no back away routinely. I am inclined to agree with your concerns, Mr. Chairman.

I am not interested in voting for any more subpoenas if all we are going to do is sit here and look ridiculous. Every time there is an important confrontation on a principle we acquiesce at the level of expediency with the major justification being that the Members on the floor of Congress will not back our plea. I think there are much more important questions involved.

Mr. McCLORY. Will the gentleman yield?

Mr. DELLUMS. I yield to my colleague.

Mr. McCLORY. I would like to make this comment: It seems to me the determination of the committee to get information has paid off in results. The criticism of the Director of the CIA is not that he has withheld information, but that he has been too forthcoming with information. I think all of these moves—the letters from the chairman, the subpoenas, the actions, the compromises, and so forth—go in the direction of getting information for this committee.

I would not want to downgrade the talents or the industry of this committee in getting essential information for our investigation. I think we have been highly successful. I think that the issuance of these subpoenas today would be a further expression of our determination to get the balance of the information, while at the same time showing that we recognize that we have received great volumes of information with which to substantially do our work, and this would enable us to complete our investigation.

Mr. STANTON. Will the gentleman yield?

Chairman PIKE. Mr. Dellums has the time.

Mr. DELLUMS. I would yield to my colleague after one comment.

I am inclined to agree with the distinguished ranking minority person with respect to the forthcoming nature of the testimony of Mr. Colby, but I don't think that is at issue here.

What is at issue here is whether we have challenged the State Department, whether we have challenged Mr. Kissinger, whether we have made a challenge to secure the material with respect to the National Security Council, and the 40 Committee—very important considerations here.

Mr. Colby has come here. He has been before us many times. He has given us an extraordinary amount of information. Sometimes we had to hassle for it, but we got the information.

The critical crunch comes where we talk about the involvement of the State Department, where we talk about the involvement of Mr. Kissinger; where we are asking for subpoenas with respect to the

National Security Council and the 40 Committee. We are right back in the same ball game we were in earlier this week where, by a vote of 8 to 5, we backed away from what I consider an important fight. That is all I am suggesting.

I agree with you with respect to Mr. Colby, but that is not at issue here.

I yield to my colleague from Ohio.

Mr. STANTON. I would point out to the minority leader of this committee that the sanitized version from the State Department hasn't come over yet.

Chairman PIKE. It has. Do you mean on Mr. Boyatt?

Mr. STANTON. Yes.

Chairman PIKE. A document has been received.

Mr. STANTON. Does it clearly indicate whether the—

Chairman PIKE. I have no idea.

Mr. STANTON. I really feel that the original stonewaller is the Secretary of State. He is going to stonewall all the way through this because he damned well can't afford to go on the record as far as his policy decisions in the intelligence community are concerned. If it were on the record, I think it would reflect not on Mr. Schlesinger leaving, but on Mr. Kissinger leaving.

Chairman PIKE. Would the gentleman yield to me?

Mr. DELLUMS. I yield.

Chairman PIKE. In fairness to the Secretary of State in this case and his role as Special Assistant to the President for National Security Affairs, I think, very frankly, that as far as the operations of the 40 Committee are concerned, there may well be a legitimate argument about Presidential privilege. My point is simply that I take a rather dim view of posturing—of charading and pretending that we are going after information—without some assurance from the committee that we are really going after the information. I think there may be, in this case, a legitimate argument against us.

Mr. STANTON. I would oppose the idea and the concept that we are getting cooperation from the State Department, because we are not.

As of now, no one on this committee can honestly say we are getting a free flow of information; and it is strictly because of the policies of the Secretary of State who has sat in front of this committee and has stonewalled it real tough. I think that anybody who takes any different viewpoint hasn't been listening to him.

Chairman PIKE. Mr. Treen.

Mr. TREEN. I just want to ask a couple of questions.

I have before me a copy of a letter dated October 20, 1975, from the chairman of the committee to the President. Does that constitute the extent of the written request for information on this subject?

[The October 20, 1975, letter from Chairman Pike to President Ford is printed on p. 1495 of the appendixes.] —

Mr. FIELD. That is correct, Mr. Treen.

Mr. TREEN. What happened to the request to permit Mr. Rushford to visit the National Security Council offices to obtain this information on October 22?

Mr. FIELD. Mr. Treen, I believe in your briefing book you will see a series of pages—

Mr. TREEN. I don't have a briefing book.

Chairman PIKE. I don't believe any of us has a briefing book.

Mr. FIELD. Do you have a folder?

Mr. TREEN. I have an attachment which is a comment. We are dealing with the subpoena directed to——

Chairman PIKE. I think it is possible that the minority side is in possession of documents that the majority side has not been made aware of.

What are you talking about when you refer to a briefing book?

Mr. FIELD. I thought you were in possession of a briefing book.

Chairman PIKE. Are you in possession of a briefing book and, if so, could the chairman have access to it, please?

Mr. FIELD. There apparently is no briefing book, Mr. Chairman.

Mr. TREEN. What response have we had to our request thus far?

Mr. FIELD. I believe you have before you a series of pages which indicate the information which was provided to Mr. Rushford. As you can see, what it does is list hundred of decisions made each year from 1965 on, but each decision is captioned in one, two, three, or four words: Media projects; covert action—which really doesn't mean very much.

Mr. TREEN. The letter, Mr. Field, says: "I have asked a member of the committee staff, Gregory Rushford, to obtain for the committee a list of the 40 Committee authorizations since 1965 * * *."

What I am getting at, obviously, is this: Have they in good faith complied with what we requested in this letter? Perhaps we have made some other requests, but all I have before me is a request for a list and it looks like they have given us a list. What we are now subpoenaing, it seems to me, is all 40 Committee records of decisions.

Mr. FIELD. If you look at the list, you can see what they authorized in that list. You have much better perception than I.

Mr. TREEN. Have they refused to give us the record of decisions?

Mr. FIELD. There is a set of documents which they have for each year since 1965. It is about an inch thick and is a summary of the minutes.

Mr. TREEN. In whose possession is that?

Mr. FIELD. It is in the possession of the National Security Council.

Mr. TREEN. Who is the custodian of those records? Is there a secretariat?

Mr. FIELD. When we were dealing with it, it was with General Scowcroft. He had it on his desk. Somebody had gone through it and made up the list. What we want is the original list of decisions that have been made. They refer to it as a list of decisions and we so refer to it.

Mr. TREEN. They refuse to give us the list?

Mr. FIELD. Yes. Definitely. Categorically.

Mr. TREEN. Can you tell us why they can't give it to us? Perhaps you can't do it in open session.

Mr. FIELD. Because it is very sensitive. They have not asserted executive privilege, if that is what you are driving at. As of right now, they have not.

Mr. TREEN. Or Presidential privilege?

Mr. FIELD. That is correct.

Mr. TREEN. You said something about some deletions. You have gotten some documents with words taken out—is that the idea?

Chairman PIKE. We have some documents with the meaning deleted.

Mr. FIELD. There are deletions in the documents you have. You will

notice, as you go along, "Payment to a political figure in ——— country." That doesn't help us very much.

Mr. TREEN. Have we gotten actual copies of the documents but with some deletions, or have they drawn up a document—a new document—in response to what we have asked for?

Mr. FIELD. All we have is what you have before you. It is just a summary of each decision. Usually about five words long, maybe less than five words.

Mr. TREEN. What about the request for Mr. Rushford to go up and visit——

Mr. FIELD. When he went over, that is what he was given and that is all.

Mr. TREEN. He wasn't permitted to look through books or records; is that correct?

Mr. FIELD. He was not shown the original documents. He did not look through books.

Mr. TREEN. The next question is, why did we choose the year 1965? I think there has been a general understanding that we would cover the period from 1960 or 1961 forward.

Mr. FIELD. Just an effort to keep our request reasonable. We figured a 10-year period was a good sampling of the decisions that had been made.

Mr. TREEN. As I understand it, the 40 Committee by that name was formed around 1971?

Mr. FIELD. You will notice that the first few pages you have are titled "303 Committee Decisions."

Mr. TREEN. Would it be correct or proper to suggest that if we are going to go back prior to 1971, we talk about the 303 Committee or whatever the name was? You want to cover the predecessors to the 40 Committee as well, don't you?

Mr. FIELD. Yes; we could do it to make it technically correct.

There is a great deal of negotiation going into this. Before the letter went to the President on October 20, we had a fair degree of contact with General Scowcroft and his staff, and they know what it is we want and were requesting.

We had identified that folder of documents and indicated that was what they wanted. They said they could give us a summary, but not the documents. I do think we understand what we are talking about, even if the letters don't sometimes spell it out in great detail.

Mr. TREEN. I think you have answered the question.

I will observe this, Mr. Chairman, before yielding back: I, for one, am not inclined, either, to issue subpoenas which we do not intend to pursue. Several members have commented to that effect. Whether or not I would ultimately want to demand the information depends a great deal on why the agency that has it tells me we shouldn't have it.

In order to solve my problem of wanting to know the reasons for its being withheld before taking action, I guess I wouldn't be able to vote for the subpoena now.

Mr. JOHNSON. It seems to me we are mixing up our doctrines here. The classification problem between us and the administration has been pretty effectively resolved.

Chairman PIKE. You mean the declassification.

Mr. JOHNSON. They send it up to us in classified form. We do not release it except by going through this process we have all agreed

upon. It should not be withheld from us on the basis of its sensitivity. As I understand it, the only legal doctrine under which it could be withheld would be executive privilege.

Has executive privilege ever been extended to a prior President? In other words, can President Ford say that he is relying on the doctrine of executive privilege with something that occurred in the Johnson administration, to prevent us from having this information, because we don't have the problem with such classification.

Chairman PIKE. I don't know the answer, but if you are asking me, my guess is that the doctrine of executive privilege probably has been used to conceal or withhold documents from prior administrations.

Mr. JOHNSON. Was that on the basis of executive privilege or classification? Has it ever been decided in the courts, or has it been asserted in the Congress? It doesn't seem to make any sense, from what I understand of executive privilege, to say that because Johnson had a conversation with Rusk, Ford can prevent its being disclosed, except on the basis of its secret, sensitive nature. Well, we don't have that problem.

Chairman PIKE. I get back to my basic question: Let us assume that you are absolutely correct and they do not provide the information. What are we going to do about it?

Mr. JOHNSON. I have felt that the other day a minority of the committee took a mistaken viewpoint of the majority of the committee members' belief and reaction to the vote. It is not my feeling that any member of this committee will stand for the notion that the executive branch has the right to withhold legitimate information that this committee has the right to have.

I don't think that any Member of Congress could accept that as a premise. I don't want to get into criticism of any Member, but it seems to me there is a certain amount of petulance prevalent in the committee staff, if not on the committee itself, with respect to the outcome of the vote the other day. I don't feel that the Members who were in the majority on that particular vote were by that doctrine saying that this committee does not have the right to information, or that it will not pursue that information which it deems to have the right to have. I don't feel that is a fair characterization of the outcome of the vote the other day.

If we want this information, then I think we ought to assume that the Members of Congress will pursue it.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Let me go to the question you raised, Mr. Chairman, about what we are going to do about it. I think that is very important. The point that you and Mr. Dellums and Mr. Stanton have raised about our backing away from the State Department, I think, ought to be addressed.

We in this committee have issued several subpoenas. One subpoena was addressed to information from Mr. Colby who was not giving us information about current covert activities. We did not get the information. We in this committee voted a resolution of necessity, and at the time it was in the Rules Committee we reached an agreement and we compromised. We compromised with Mr. Colby. We compromised because he presented the information which deleted 50 words in two instances and we agreed not to release the information

except under certain circumstances. So in that case we reached a compromise, and for some reason that was acceptable to this whole committee.

Then we ran into another situation. We issued a subpoena to the Secretary of State for the Boyatt memorandum. We all know what we went through on that. The Secretary of State eventually compromised with us, but the compromise we reached did not satisfy everybody on the committee. In deciding this thing, I guess I am constantly amazed at the degree of antagonism for Secretary Kissinger in this Congress. I guess it is understandable, and maybe I feel it sometimes myself; but you can't compromise with Mr. Colby on the one hand and then object when we compromise with Mr. Kissinger on the other hand.

So my question is: Does the compromise bother the committee members? Because if we cannot compromise and if we issue subpoenas, and we are going to go right down the track with those subpoenas—come hell or high water, no matter what, no matter what evidence comes up, no matter what kind of situation—then I think we should not issue the subpoenas.

But, if we can issue subpoenas because we need the information, and if it comes in in a form on which we can compromise—as we did with Mr. Colby, and as we did with an 8-to-5 vote concerning Mr. Kissinger—then if that is acceptable to the committee I would like to vote for the subpoena.

Mr. McCLORY. Not with respect to this particular subpoena, but with respect to some of the other subpoenas, I would say that the staff has an indication that the material will be forthcoming if the subpoena is issued. In other words, the agency involved wants to respond to a subpoena and not just deliver the material in response to a letter, or some other less formal request.

I think the subpoena in the first instance indicates a desire on the part of the committee to get the information because the committee feels that it requires that information.

I don't think we have to cross the bridge right now as to whether or not some alternative proposal—some compromise method of getting the information—wouldn't be acceptable, as the committee has decided with respect to the Boyatt memorandum or with respect to other information.

Mr. ASPIN. We have a good case of importance here. I think we can make the case that the counsel, Mr. Field, is making—that this is important.

I came in expecting to vote for this subpoena, but the words of the chairman and of Mr. Stanton and Mr. Dellums make me think maybe I shouldn't; because if it is the view of this committee—or if people on this committee think—that once we issue a subpoena we can never compromise from that, but have to go down the road and, by God, bang our heads against the wall no matter where that leads, then I am going to be much more reluctant. I don't know the feeling of the members on that question.

If we are going to compromise in cases where we have to, as we did happily with Mr. Colby, and unhappily with Mr. Kissinger, then I would vote for the subpoena. I don't know what the attitude

of the committee is on subpoenas, but I don't want to go through another thing like we went through 2 days ago.

Mr. DELLUMS. Will the gentleman yield?

Mr. ASPIN. I will yield to Mr. Dellums.

Mr. DELLUMS. Let me try to respond to your question.

I recall the gentleman from Wisconsin saying in the debate the other day "If I had known that the last subpoena was so narrowly focused, maybe I would not have voted for the subpoena."

My point is: I think the way you answer your own question is that if you believe, by virtue of your vote, that this information is important at this particular moment, I do think that binds you to stand behind that subpoena.

Now, the other day I think you said—we can go back to the record and check it—that you backed away from the subpoena because at the particular moment that you voted you weren't quite aware how narrowly focused that subpoena was.

I think your responsibility this morning is to determine whether the mandate of the subpoena is sufficiently broad enough to allow you to fight it all the way to the end if it becomes a matter of principle in terms of the ability of the committee to function effectively. I think you ought to satisfy yourself on that. Then if you are satisfied, and you vote for it, I think that you are honorbound and dutybound to stand behind that subpoena. I think you should vote against the subpoena, on the ground you already established, if it is too narrowly focused.

Mr. ASPIN. Let me say that this gets to the point of the thing.

When we voted on the subpoena for the Boyatt memorandum, I knew nothing about what is called the dissent channel in the State Department. That was a very good reason for us not to have the information, except in the form in which we have it.

Now, if after we vote for a subpoena information comes to us that shows that the situation is different, then you are saying I cannot change my mind; I cannot change my vote. Therefore, I cannot vote for the subpoena because I don't know what information will come in later.

The gentleman from California apparently was willing to compromise with Mr. Colby when we sent that subpoena for him. He supplied the information, but not the way we wanted it. He deleted 50 words in 12 instances and the only way we got that information was by agreeing not to release it except with the approval of the President. So we compromised in that case.

If the gentleman believes that we have to sit with the subpoena, no matter what information comes in later, then I would have to vote no—against the subpoena—because I don't know what information is going to come in later.

Chairman PIKE. Would the gentleman from California yield to me?

Mr. DELLUMS. Yes; I yield.

Chairman PIKE. I would like to correct a couple of misstatements of fact, I think.

In connection with the Colby subpoena 50 words were deleted, but we were permitted to verify the words which were deleted.

I know what the words deleted were, and I made a judgment that, in this case, there was a legal ground—based on sources and methods—

which required the deletion, or made the deletion of those words a legitimate exercise.

In the case of the new subpoena, I just plain don't know what arguments will be made against it. I haven't got the slightest idea. You are impressed by the dissent channel argument. The more I looked into the dissent channel, the less impressed I was by it. I found it was 6 months before Mr. Boyatt ever got an answer. He never got an answer from the Secretary of State. He got an answer from some other middle-level official, which would mean we could never get a copy of the answer either.

I am, therefore, not particularly impressed by the dissent channel argument.

I personally am perfectly willing to sign subpoenas to get information, but I do not feel that we ought to have some understanding about what is going to happen if we don't get the information.

You talk about compromise. I have shown, in the view of some members of the committee—in fact, in your view—too great a willingness to compromise. You opposed the compromise, as I recall it, which I made with the President. You voted against that compromise.

I think I have shown a willingness to compromise which is at least as great as yours, in that I worked one out that you voted against. That was as to the release of information. What we are now talking about is the right of Congress to get information. On that I have a great deal of difficulty compromising.

I am willing to compromise requests, and the letter was a request. What we got in response to the letter was, as our staff has said, essentially meaningless and worthless. Now we are escalating the level to a subpoena. No matter how many times Mr. Kissinger refers to a subpoena as a request, a subpoena is not a request. A subpoena is a subpoena.

We have had requests which have been ignored. As far as I am concerned, I think subpoenas should be enforced.

Mr. ASPIN. Let me ask the lawyers here, either on the committee or on the staff: If we issue these subpoenas this way and then reach some kind of an accommodation—if we use subpoenas, in effect, as a way of making a request because we can get action on it faster, I guess—are we demeaning the subpoena? Are we misusing it? Are we using it badly? Is the subpoena something that is very important, that we ought to use only occasionally when we really need it, or is it something we can use in this way? I don't know. I am asking.

Mr. STANTON. That, to me, as a legislator, is ridiculous. First of all, a subpoena is an extraordinary power whenever used by a legislative body and you don't need to be a lawyer to understand that. The simple fact of the matter is, if we have to use it as an ordinary tool to get ordinary materials in conducting this investigation, then we will never get anywhere in terms of getting cooperation from the administration.

Mr. FIELD. I think Mr. Donner has some information that would be very helpful on the legal background of the subpoenas.

Mr. DONNER. Returning to the subpoena to Colby: It was the opinion of the legal staff of this committee that, with the delivery of the material to the chairman with the 50 words deleted, there was substantial compliance, especially since the chairman himself verified the words. The doctrine of substantial compliance as a well-established doctrine.

A subpoena, however, sir, is not an invitation to negotiate. A subpoena is a command by a duly authorized body of government—to deliver information. That is a subpoena duces tecum. While we can accept in law the doctrine of substantial compliance—the words are self-explanatory—the fact is that anything short of substantial compliance is noncompliance. It is a legal mandate from an authorized body directing another body—in this instance, an executive agency—to deliver materials. I have never encountered the idea of temporizing subpoenas. It is not an acceptable doctrine in law.

Mr. MURPHY. The gentleman leaves out a very important element in the law on subpoenas: substantial compliance and who determines the substantial compliance.

Mr. ASPIN is arguing that we determined substantial compliance when we didn't go to the House of Representatives for enforcement.

What he is asking is, if this committee issues a subpoena and we get information back and we deem it to be in substantial compliance with our subpoena, then is it satisfied?

Mr. DONNER. That is correct, sir.

Mr. MURPHY. In the usual course of subpoenas, you have a third person, who acts as an arbitrator and who determines substantial compliance, and that is a judge. We don't have that here.

Mr. DONNER. You are absolutely correct, Mr. Murphy. After delivery of the material to the body that requested it, the body can determine that the material delivered is in substantial compliance. You are absolutely correct, sir.

Mr. ASPIN. I will yield to Mr. Dellums.

Mr. DELLUMS. I would like to set the record straight.

First of all—and on checking the verbatim transcript—the gentleman from California did not support the Colby compromise. I don't appreciate your distorting the record, because I have not in any way, at any time, voted for any effort to dilute or water down the thrust of this committee's congressionally authorized powers.

I think we have now immortalized the precedent of compromise, and I think the record will show I warned against the first compromise. I think that is the situation that we are in now.

This is my final comment: You mention we may learn new information after we have issued a subpoena—which is a demand for information. They can always come up with new information and subtleties and nuances which can preclude this committee from gathering information.

I think that is an absurd assertion and I don't mean that in a demeaning fashion; I mean it to be as objective as I can make it.

Over the past weeks and months we have been the victim of many, many pieces of new information that preclude the ability of this committee to function. And I don't think that is appropriate.

Mr. ASPIN. It is true the gentleman did vote against that compromise; but that compromise never did seem to cause the dissension in the committee that this last compromise has caused and I don't know exactly the reason for that.

I voted against the original compromise and for the second compromise.

The question I am asking is—and this will determine how I vote on those subpoenas: If it is the view of the members that once you

issue a subpoena, you cannot accept substantial compliance of anything less than exactly what we asked for—in other words, if we are going to get upset with each other and accuse each other of things when we accept some kind of compromise—then I won't vote for subpoenas because I don't know how they are going to turn out.

If we can accept substantial compliance in something short of what we demand—we vote on it by a majority, it carries, and we are not accusing each other of selling out—then I would be very happy to vote for the subpoena.

I don't want to be in the position of having voted for a subpoena, and then voting for substantial compliance and being accused of selling out when I am trying to do the job.

Mr. GIAIMO. Will you yield?

Mr. ASPIN. I yield.

Mr. GIAIMO. I want to make sure I understand the gentleman correctly.

Do you say you are in favor of supporting a subpoena if the subpoena in essence says, "Mr. Addressee, this is a subpoena but don't be fooled by it because it doesn't really mean what a subpoena usually means; it means an invitation for you to come back with a counter-offer and work something out."

Is that your impression?

Mr. ASPIN. No.

Mr. GIAIMO. That is what it sounds like.

Mr. ASPIN. If the gentleman will let me, I will try to explain it one more time.

What I am saying is that I think when you issue a subpoena, you ought to have in your own mind that it is your intention to go all the way; that it is important to get that information and we should go all the way with it. However, when we issue subpoenas we, of course, do not know the points of view that the other side will raise, or what other kinds of situations might arise.

If it turns out that they produce something that is in less than substantial compliance, and we vote it as substantial compliance, then I think we have accepted it.

Mr. GIAIMO. Will you yield again?

When I support the subpoena, I intend to go all the way. I intend for the subpoena to be honored; but I can't go all the way when the gentleman from Wisconsin doesn't support me in the subpoena.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I believe there is a motion before us. I move the previous question.

Mr. HAYES. I object, Mr. Chairman.

Chairman PIKE. You can't object. You can vote it down, but you can't object to a person moving the previous question.

We will ask all in favor of the previous question to say aye. Contrary, no.

The noes appear to have it.

Mr. Hayes is recognized.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Donner, would you mind discussing, for my edification, a little bit about the specificity of one of the subpoenas which says give us everything, I believe, since 1965, in the way of minutes. Is that kind

of a request an appropriate request for us to be making by way of the subpoena, or is that a fishing expedition?

Mr. DONNER. I am at a disadvantage for a moment. I have to get a copy of it.

Mr. FIELD. We discussed this in some detail earlier and described what it is that we are looking for here. We have seen these documents. They consist of approximately—

Mr. HAYES. I heard you explaining it.

Mr. FIELD. They have it. They are ready to hand it over. It will not be a physical problem to comply with it.

Mr. HAYES. I am not worried about any kind of physical problems, but there is a matter of compliance when a subpoena is sloppily drawn and doesn't cut directly into what we are looking for. Some of the subpoenas do that.

For example, it seems to me that part of the subpoenas discuss specific subjects and specific dates, and the relationship of the subject to the date. Others simply say, whatever has happened since a particular date forward. What I am getting down to is, what is our reason for it?

I haven't had anybody give me a memorandum as to why we are particularly doing this. I haven't been in a caucus to discover that, nor have I been in an executive session here.

When I practice law I don't generally do it out in front at the counsel table in a courtroom, with the gentlemen there and spectators and witnesses and everybody else sitting around watching the process.

Chairman PIKE. I will take the responsibility for that, Mr. Hayes. One of the things which I have tried to do is to be as open as possible in these hearings. I don't like executive sessions. I believe that American people are entitled to the truth, and I would rather not settle issues like this in secret caucuses. It is my view that it is much better to let the people know what our problems are, what the issues are, and the manner in which we are proceeding. I will take the responsibility for that.

Mr. HAYES. That answers my question then, Mr. Chairman.

Mr. FIELD. Mr. Hayes, may I address the "sloppily drawn" subpoena? This subpoena is specifically drawn and identifies the exact documents we need. There can be no question in the mind of the addressee as to what we are referring to, and we have reason to believe—we know, in fact—that everything in there pertains to the legitimate work of this committee.

Mr. HAYES. You have reason to believe that is the case—is that what you mean? Or do you know?

Mr. FIELD. Every 40 Committee decision is a covert action approval. Those actions are very much within the intelligence community's responsibilities and problems, and within this committee's work. We do want to see who approved them, who signed off on them, how specific they were, and the reasons that were given for these projects.

Mr. HAYES. Mr. Field, you discussed a minute ago, as well, the thought that you have that the executive can't begin to distinguish compliance on an issue-by-issue basis, that after all they may have waived executive privilege for example; and I really don't know where that doctrine of waiver of executive privilege comes along—whether it is selective or nonselective. I don't know of any cases on the matter, and

I feel distinctly uncomfortable when we seem to be approaching this whole matter on a very strange basis.

For example, Mr. Dellums discussed that one of the ways he is approaching it is on the basis of staff assertiveness, and he lauded you—most properly, in his view—for being aggressive, in his view being more aggressive than some members of this committee.

I don't really feel I am down here to be aggressive, and I don't feel, quite frankly, that the entire matter is getting adequate debate. As a matter of fact, I think one could assume that the debate is beginning to center as to what Mr. McClory or others who in the past have not followed some direction here, or some so-called assertiveness, tends to do later on in the hypothetical. This is the problem that I have.

Mr. DELLUMS. Will the gentleman yield because you used my name?

Mr. HAYES. Not because I used your name, but I will be glad to yield.

Mr. DELLUMS. I appreciate it. I am in total, absolute, unequivocal disagreement with my colleague. I think we are here to be assertive.

Mr. HAYES. I wouldn't have guessed otherwise what you thought.

Mr. DELLUMS. If you are going to yield, yield. If not, I won't try to take the time because I won't be combative with my colleague.

Chairman PIKE. Is there any further discussion?

Mr. DELLUMS. I haven't finished my comments. I wanted to respond to him.

Mr. ASPIN. Mr. Chairman?

Chairman PIKE. Does the gentleman from Indiana continue to yield to the gentleman from California?

Mr. HAYES. Mr. Chairman. I will yield at your pleasure.

Mr. DELLUMS. It is your pleasure; you tell me if you want to yield or not.

Mr. HAYES. I will be happy to yield.

Mr. DELLUMS. Maybe the honeymoon is over, and that is fine, too. The truth will get out anyway.

I think we are here to be assertive, and I think to challenge the staff on a subpoena referred to as sloppy is rather absurd. If we knew how to specify documents in these subpoenas with greater specificity than we do at this moment, we wouldn't need to have an investigation, because that requires and demands in the first instance an extraordinary knowledge of all the facts and information.

We are bothering with an investigation in order to narrow down, as clearly as we possibly can, an avenue of concern—

Chairman PIKE. Gentlemen, let me just suggest to you that it is my understanding that we have nine subpoenas before us this morning. We are now talking about the first one. It is 11:06 a.m. The clock continues to tick, and I would simply suggest that I think we basically understand the issues and I don't see any real reason why we can't vote on it.

Mr. ASPIN, do you see a real reason?

Mr. ASPIN. Just 30 more seconds in support of something Mr. Hayes has said—not to be asking for, and I don't think Mr. Hayes was asking for, closed meetings or secret meetings or other things. But you know we come into a meeting like this, and we have a stack of these subpoenas on the desk and we don't know what they are about. We haven't been given any prior information about them.

If it is going to cause a problem with our colleagues when we vote for these subpoenas and then accept as substantial compliance something which is less—if this is going to cause a lot of heartache—this vote on the subpoena tends to be very important.

To come in and get a quick briefing and go ahead and bang through these worries me a little. That is for the future.

Chairman PIKE. Mr. Aspin, I want to assure you I have never seen the subpoenas either. All of this stack of subpoenas came from my left—not from me or from my right.

Mr. ASPIN. You mean politically from your left?

Chairman PIKE. No, I mean geographically from my left.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

I think what is bothering some of the members should not really be a problem here. I don't think there is any difficulty if we are satisfied that the material we are looking for is identified specifically when issuing the subpoena. I think as long as we are satisfied with the specificity of the subpoena, that is all we should be concerned with right here. Whether or not we have compliance will be considered in a later vote.

Chairman PIKE. Are we ready to vote?

Mr. Treen.

Mr. TREEN. Mr. Chairman, we are going to get ready to vote, and I just want the reasons for the vote I am going to cast to be on the record. I don't believe that sensitivity alone is sufficient basis for us not to issue subpoenas. If that is the only reason given to us by the executive branch, it is not sufficient because we have covered the problem of sensitivity. We have worked out a procedure. There is not much doubt in my mind, as a member of the committee and an attorney, that we have the right to get the information that we are subpoenaing, but there is a different issue, and that is whether or not we want to enforce that right.

There may be reasons that appear now or appear later where we don't want to exercise that right. Now, upon the appearance of those reasons, it might cause me to elect not to go forward—not because we don't have the right, but because of some other reason we should not go forward.

So I need to know the reasons now—the specific reasons—why the executive branch will not be forthcoming with documents. I tend to believe that if we issue subpoenas they should be enforced and, accordingly, I have no recourse but to vote “present” on the subpoenas because we do not know what reasons might be proffered which would cause some or all of us to decide not to exercise our legal right.

Mr. STANTON. Mr. Chairman.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. I am going to vote for the subpoenas, and not for the doctrine anybody has unannounced here today. Certainly I don't see any question about the fact that we entered into an honest compromise with Mr. Colby. I think for anybody to characterize what we did with Dr. Kissinger in the same category is misleading people. Frankly, I feel that we have got to issue subpoenas, or we might as well fold up the committee.

Chairman PIKE. Mr. Kasten. I think if you care to renew your motion, it might carry right now.

Mr. KASTEN. Mr. Chairman, I move the previous question.

Chairman PIKE. The previous question has been moved. All in favor of the previous question say aye.

Contrary, no.

The noes appear to have it.

Mr. Milford?

Mr. MILFORD. I didn't want to delay the procedures but I would like to make a parliamentary inquiry: Are we voting on all of the subpoenas?

Chairman PIKE. No; we have only heard about the first one at this point. We are voting on one subpoena.

Mr. MILFORD. This would be to the Assistant to the President for National Security Affairs; is that correct?

Chairman PIKE. That is correct.

Mr. DELLUMS. Mr. Chairman?

Chairman PIKE. Mr. Dellums?

Mr. DELLUMS. One brief comment: I think there is a point that wasn't made when we discussed the Colby compromise versus the Kissinger compromise on the issue of substantial compliance.

What we had in the instance of Mr. Colby was information in the committee where we could scrutinize that information and each of us could arrive at a judgment as to whether we thought that was substantial compliance. The difference between the Colby situation and the Kissinger situation is that the information never was before us for us to determine whether there was substantial compliance. We may very well have bought a pig in a poke and that is the point I am trying to make.

We never got the information for any member of this committee to determine substantial compliance. We bought it on the basis of an assertion, not on the basis of information before us.

So I think to talk about the Kissinger compromise vis-a-vis the Colby compromise is really not to address the reality of the situation. They were two very, very different situations.

Chairman PIKE. If there is no further discussion, the question is on the motion of Mr. McClory that subpoena No. 1 be authorized. This requires a rollcall vote, and the clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Present.

The CLERK. Mr. Stanton?

Mr. STANTON. Aye.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. Present.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. Present.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. TREEN. Mr. McClory votes "aye" by proxy.

The CLERK. Mr. Treen?

Mr. TREEN. Present.

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

Mr. CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. Aye.

By a vote of 9 ayes, no nays, and 4 presents, the subpoena will be issued.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1481–1482 of the appendixes.]

Does somebody want to make a motion? Since this is your package on that side, would you care to make the motion, Mr. Treen?

Mr. TREEN. No.

Mr. JOHNSON. What motion is appropriate?

Chairman PIKE. For the second subpoena.

Mr. Murphy?

Mr. MURPHY. These are not numbered. Which is the second one?

Mr. FIELD. I believe the subpoenas are in the sequence we want. The second subpoena would be to the Assistant to the President for National Security Affairs for all the minutes of the National Security Council Intelligence Committee, its Working Group, and its Economic Intelligence Subcommittee, since November 8, 1971.

Mr. JOHNSON. Mr. Chairman, if the staff doesn't care to go into any more detail than that on it, I move the subpoena be issued.

Chairman PIKE. Mr. Johnson moves that the second subpoena be authorized. Mr. Treen?

Mr. TREEN. I have an amendment to the motion.

Chairman PIKE. The gentleman will state his amendment.

Mr. TREEN. The amendment would alter the subpoena by inserting in place of the date November 8, 1971, the date of January 20, 1961. I am going to offer this amendment probably on all the subpoenas, because I think if we are going to cover this area, we should be consistent with what we stated before—that we will cover the period of the last four Presidential administrations. So I would move we start with January 20, 1961.

Mr. FIELD. Mr. Chairman, one comment on that: The reason for the date November 8, 1971, is that none of these three subcommittees existed prior to that date, and apparently no similar type of subcommittee existed prior to that date. We can check on that and report back on whether there was one.

Mr. TREEN. There was no National Security Council prior to that?

Mr. FIELD. This is the National Security Council Intelligence Committee, its Working Group, and its Economic Intelligence Subcommittee. That subcommittee is definitely new. And the Intelligence Committee, which is actually a subcommittee, which is a consumer of intelligence, did not exist as a subcommittee or anything like that prior to November 8, 1971.

Mr. TREEN. And the working group, and so forth?

Mr. FIELD. Apparently that is true.

Mr. TREEN. Well, if you aren't certain, I would like to stick to the date, and if it wasn't formed until 1971, then, of course, there is

nothing in existence so there is no problem. If you are certain, of course, I would be pleased to withdraw the amendment.

I would be pleased, if I could, Mr. Chairman, to change my motion to read "from the inception of the National Security Council Intelligence Committee, Working Group, and the Economic Intelligence Subcommittee."

Chairman PIKE. Is there objection? The Chair hears none. Without objection, the amendment is agreed to.

Is there any further discussion on the issuance of the subpoena? The clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Present.

The CLERK. Mr. Stanton?

Mr. STANTON. Aye.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. Present.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. Present.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. TREEN. Mr. McClory votes "aye" by proxy.

The CLERK. Mr. Treen?

Mr. TREEN. Present.

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. Aye.

Nine ayes and four present, and the subpoena will be issued.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1483-1484 of the appendixes.]

Mr. FIELD. Mr. Chairman, the next subpoena is to the Assistant to the President for National Security Affairs for all Washington Special Action Group meeting minutes relating to (a) the October 1973 Mideast war and subsequent troop alert; (b) the Cyprus crisis of 1974; and (c) the Portugal coup of April 25, 1974.

As a matter of comment, the Washington Special Action Group was established in 1969 and for that reason we have not picked any prior events. This is a crisis mechanism within the National Security Council, similar to the Watch Committee in the intelligence community.

Mr. JOHNSON. I move the issuance of the subpoena.

Chairman PIKE. The question is on the motion of Mr. Johnson that we issue the subpoena. Is there any discussion?

[No response.]

The clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Present.

The CLERK. Mr. Stanton?

Mr. STANTON. Aye.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. Present.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. TREEN. Mr. McClory votes "aye" by proxy.

The CLERK. Mr. Treen?

Mr. TREEN. Present.

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. Aye.

By a vote of 10 ayes, 3 present, the subpoena is authorized.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1485-86 of the appendixes.]

Chairman PIKE. The next item, Mr. Field.

Mr. FIELD. The next subpoena is to the Assistant to the President for National Security Affairs. It is for all intelligence reports furnished to the National Security Council by the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency between October 15, 1973, and October 28, 1973, relating to the 1973 Mideast war and the military activities of the Soviet Union. The reason the staff would like this information is that we have a number of indications that the troop alert which the United States went into shortly after the 1973 Mideast war may have been the result of faulty intelligence or other problems, and we feel this information might well provide an answer to that.

Chairman PIKE. Does somebody want to move the issuance of this subpoena?

Mr. DELLUMS. I move it.

Chairman PIKE. Mr. Dellums moves the issuance of this subpoena. Is there any discussion? The clerk will call the roll.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Present.

The CLERK. Mr. Stanton?

Mr. STANTON. Aye.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. Present.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. TREEN. Mr. McClory votes "aye" by proxy.

The CLERK. Mr. Treen?

Mr. TREEN. Present

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. Aye.

By a vote of 10 to 3, the subpoena will be issued.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1487–88 of the appendixes.]

Mr. FIELD. The next subpoena is to the Assistant to the President for National Security Affairs. It is for all documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency and the Department of Defense since May 1972, relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok Agreement of 1974.

Chairman PIKE. How does that come within our jurisdiction, Mr. Field?

Mr. FIELD. Mr. Chairman, one of the most important pieces of strategic intelligence which this country should be concentrating on is adherence to the SALT I Agreement. We have substantial information which would indicate that there may be an attempt to distort figures—either by those who are in favor of détente and are seeking a SALT II Agreement or by those who oppose that. It is a type of problem similar to the changing of figures which we looked into in the Tet offensive. Only in this case we feel it is probably of greater strategic importance. One of the ways that we will be able to determine this is to compare the reports coming in from the different agencies.

Chairman PIKE. Do you have any indication whatsoever from the White House that they would be willing to provide such information?

Mr. FIELD. Mr. Chairman, we have been trying now for a few weeks to get this information. There is an obvious problem with our getting this. It relates very much to a recent crisis which has taken place in the executive branch. It may or may not involve improprieties. This has been indicated to us, and, quite frankly, we will not get this information short of a subpoena.

Chairman PIKE. Do you have any indication that you will get it with a subpoena?

Mr. FIELD. I really can't answer that, Mr. Chairman. I just don't know.

Chairman PIKE. You either have an indication or you have no indication, one way or the other.

Mr. FIELD. That is correct.

Chairman PIKE. Mr. Treen.

Mr. TREEN. I don't seem to have that particular subpoena. In looking through them, I can't locate that one.

Mr. MILFORD. Mr. Chairman, I don't have copies of these subpoenas, either.

Mr. TREEN. My question is: What efforts, Mr. Field, have been made to obtain the information described in the subpoena?

Mr. FIELD. Mr. Treen, we have met with people at the Central Intelligence Agency. We have met with people who work with the National Security Council staff. We have sent letters. We have asked for briefings. We have asked for the information. We have asked for information from the Department of Defense. We have had a group on our staff working on this almost constantly for, as I say, over a week. And they are not making progress in getting the information.

Mr. TREEN. Have you written requests for the information?

Mr. FIELD. Yes, we have. I have a letter here which I brought with me, which is a request.

Mr. TREEN. Just give us the date and who signed the letter.

Mr. FIELD. This particular letter is dated November 4, and it is a followup to the efforts which we had been making prior to that time.

Mr. TREEN. Is this a subject we have been into at all, other than by staff investigation—the material that you are seeking now?

What I am concerned about is, are we going to be able to cover all these bases? It is November 6, and we are trying to wind up by mid-December, or before Christmas, and I am wondering—

Mr. FIELD. Mr. Treen, I can only say this is a subject which I think the staff feels is a followup to the Tet offensive problem of whether or not intelligence estimates were altered in order to satisfy political objectives. It happens to be probably the most sensitive and important estimate of this day and age; and we have, as I say, a number of what I think are credible reports that there may be either double book-keeping or different sets of figures going to the top levels—depending on whose political camp you happen to be in when you are serving in an intelligence function. If that is taking place, it would be a serious problem for our intelligence community.

Mr. TREEN. I don't want to hold us up any more, but can I see that letter?

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I don't understand the nature of the request that the committee has made for this information.

Mr. Chairman, you signed a letter requesting this information from the Central Intelligence Agency?

Chairman PIKE. Is that one that I signed?

Mr. FIELD. I think I signed that.

Chairman PIKE. Mr. Field apparently signed it. I do not recall signing it.

Mr. KASTEN. This was a letter dated 2 days ago referring to requests that had been made in the past. What requests had been made in the past?

Mr. FIELD. The normal process we follow is this: We work usually for a fair period of time trying to get information by oral request—getting briefings, and that type of thing. Ordinarily, a fair amount of time after that, a letter follows. The letter, itself, is usually generated by a reluctance by the executive branch to provide the material through an informal request.

Mr. KASTEN. I am not satisfied with that answer.

You were working with the CIA, and all of a sudden decide we want to go into this one area. That was a decision that was made by the staff; is that right?

Mr. FIELD. No, the information came to the staff as to the possible—

Mr. KASTEN. It is a subject matter that has never been discussed, to my knowledge, in the committee.

Mr. FIELD. That is correct.

Mr. KASTEN. So it was a decision made by the staff or a decision made by the chairman in consultation—

Chairman PIKE. Would the gentleman yield? It was a decision, I believe, made by the staff, not in consultation with the chairman, but with the ranking minority member.

Mr. KASTEN. It was a consultation made by the staff with Mr. McClory?

Chairman PIKE. That is correct. None of these subpoenas have been prepared either at the request of or in consultation with the chairman. All of them have been prepared by the staff in consultation with Mr. McClory.

Mr. KASTEN. My only point is, I don't think we want to be issuing subpoenas if the information would be available to us through normal channels. We are talking here about a letter dated 2 days ago. I am not sure we have received a response to this letter—and even this, I think you would admit, is a kind of sloppy procedure if we are formally requesting certain information.

Mr. FIELD. Mr. Kasten, I have spoken personally with Mr. Bolton, who would be the one to decide and arrange for the delivery of this information. He has told me it will not be forthcoming without a subpoena. With a subpoena, it will probably be forthcoming.

The only other thing I would mention is the fact that it is now November 6 and we simply cannot do any kind of adequate job on something that comes in here after the end of this month. If we are going to get this information—if somebody says to me you will get it with a subpoena and you will not get it without it—then I have to come before the committee and say it is an important subject; it is something which does relate to things we have looked into in the past and I need a subpoena to get it. That is all I am saying.

Mr. KASTEN. I misunderstood your answer to the chairman's question of 5 minutes ago, when you said you didn't know if we would have a response to this with or without a subpoena.

Mr. FIELD. I was told just now of a followup on this.

Mr. KASTEN. I don't have any objection to this.

Mr. STANTON. I move the previous question.

Mr. FIELD. Will the gentleman withhold for a moment?

Mr. STANTON. I withhold.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. I am a little concerned as to whether or not we have the jurisdiction to get into this problem, and I would certainly like to have more information before voting for such a subpoena.

Mr. FIELD. Mr. Chairman, the jurisdiction would flow from the fact that we are asking to see intelligence reports and intelligence estimates of, for example, Soviet strength and Soviet deployment, and whether they are in compliance or not in compliance with the SALT agreement. Those intelligence reports are generated by the intelligence community, and they are a reflection of the quality of their work. If they have in any way been shaded up or down, it would be important to our examination of whether or not they are performing accurately, objectively, and so forth.

Mr. MILFORD. This is also getting into the middle of a very important matter that is in progress right now. I am reluctant to see us get into this area at all.

Mr. STANTON. I don't think you have to worry about it. We won't get any compliance.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Mr. Chairman, in the interest of discussion, comment has been made as to whether or not the subpoena is necessary—whether we could get the information without a subpoena. I don't think that is important. That is one of the reasons I am voting "Present" on these subpoenas—because I don't think this committee is serious about enforcing its subpoenas; witness what we did last week. I think the message is out loud and clear to the executive branch that we are sending you subpoenas, but if you don't really like to give us the information we are asking for, don't bother to do it, because we are not going to back the chairman and support the enforcement of the subpoenas. That is why I am voting "Present". I think we already created the harm last week.

And one final comment: I am not voting "Present" for the same reasons the gentleman from Wisconsin is.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Mr. Chairman, in connection with the subpoena before us now—I believe we have a motion on the floor to issue the subpoena—I would like to move that the issue be deferred until the next meeting of this committee.

Chairman PIKE. The question is on the motion by Mr. Treen to defer action on this particular subpoena until the next meeting of the committee.

All those in favor of the motion, signify by saying aye.

[Chorus of ayes.]

Contrary?

[Chorus of noes.]

The Chair is in doubt. All those in favor, signify by raising hands.

Three ayes. All those opposed to the delay, raise their hands.

Seven noes. The gentleman asked for a record vote on delay. All those in favor of a record vote, raise their hands.

Three. That is a sufficient number, I believe, in a 13-man committee, and the clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. No.
 The CLERK. Mr. STANTON.
 Mr. STANTON. No.
 The CLERK. Mr. Dellums.
 Mr. DELLUMS. No.
 The CLERK. Mr. Murphy.
 Mr. MURPHY. No.
 The CLERK. Mr. Aspin.
 Mr. ASPIN. No.
 The CLERK. Mr. Milford.
 Mr. MILFORD. Aye.
 The CLERK. Mr. Hayes.
 Mr. HAYES. Aye.
 The CLERK. Mr. Lehman.
 Mr. LEHMAN. No.
 The CLERK. Mr. McClory.
 Mr. TREEN. Mr. McClory votes "aye" by proxy.
 The CLERK. Mr. Treen.
 Mr. TREEN. Aye.
 The CLERK. Mr. Kasten.
 Mr. KASTEN. Aye.
 The CLERK. Mr. Johnson.
 Mr. JOHNSON. No.
 The CLERK. Mr. Pike.
 Chairman PIKE. No.

By a vote of 5 ayes to 8 nays, the motion is not agreed to. The question is on the issuance of the subpoena, and the clerk will call the roll.

The CLERK. Mr. Giaimo.
 Mr. GIAIMO. Present.
 The CLERK. Mr. Stanton.
 Mr. STANTON. Aye.
 The CLERK. Mr. Dellums.
 Mr. DELLUMS. Aye.
 The CLERK. Mr. Murphy.
 Mr. MURPHY. Aye.
 The CLERK. Mr. Aspin.
 Mr. ASPIN. Present.
 The CLERK. Mr. Milford.
 Mr. MILFORD. No.
 The CLERK. Mr. Hayes.
 Mr. HAYES. Present.
 The CLERK. Mr. Lehman.
 Mr. LEHMAN. Aye.
 The CLERK. Mr. McClory.
 Mr. TREEN. Mr. McClory votes "no" by proxy.
 The CLERK. Mr. Treen.
 Mr. TREEN. No.
 The CLERK. Mr. Kasten.
 Mr. KASTEN. Present.
 The CLERK. Mr. Johnson.
 Mr. JOHNSON. Aye.
 The CLERK. Mr. Pike.

Chairman PIKE. Mr. Treen, do I understand you voted "No" for Mr. McClory by proxy? Because if you did, the Chair votes "No," also.

Mr. GIAIMO. Mr. Chairman.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Change "Present" to "No".

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. I would like to ask the gentleman from Louisiana: This is Mr. McClory's subpoena, is it not?

Chairman PIKE. I would simply say the gentleman is out of order in asking that question at this particular time. We have a vote in progress. We can't interrupt it for debate.

Mr. DELLUMS. Parliamentary inquiry.

Chairman PIKE. State it.

Mr. DELLUMS. Isn't a proxy supposed to be signed by the person?

Chairman PIKE. The proxy is, I understand, here, and I accept the existence of the proxy. We have to have a little faith around here, and I suggest it is valid.

Mr. DELLUMS. My colleague suggests I don't challenge it, and I won't.

Chairman PIKE. By a vote of—I have been asked to suspend, pending a reconsideration by the gentleman from Louisiana.

Mr. TREEN. Mr. Chairman, I ask permission to change Mr. McClory's vote to "Aye."

Chairman PIKE. Mr. McClory asks unanimous consent to go off "No," on "Aye." Is there objection? Off "No," on "Aye," and I believe I am correct in saying that would require unanimous consent in his absence. The Chair goes off "No," on "Aye."

Mr. GIAIMO. Mr. Chairman.

Chairman PIKE. Yes.

Mr. GIAIMO. Off "No," on "Present." I know we are in the midst of a vote, and I run the risk of being out of order, but I do this to point up the futility we are now approaching in this committee.

Chairman PIKE. The gentleman is out of order; he is correct in that sense.

By a vote of seven ayes, two nays, and four present, the subpoena is authorized. I want to remind the committee that it takes seven votes to authorize a subpoena from this committee.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1489–1490 of the appendixes.]

Chairman PIKE. Mr. Field, what is your next subpoena?

Mr. FIELD. The next subpoena would be directed to the Secretary of State. It is for all State Department documents relating to recommendations for covert action made to the National Security Council and the 40 Committee from January 20, 1965, to the present. The reason for this, as I discussed earlier, is that covert action really comes from three sources: From within CIA, sometimes down from the President, and also from within the State Department.

We have access to the covert action recommendations made by CIA. Through the 40 Committee minutes, we will have those from the President. And we now would like to have access to the data from the State Department.

Chairman PIKE. Mr. Treen.

Mr. TREEN. I am having a little difficulty—

Chairman PIKE. Very frankly, I am finding it a little difficult, too. This is Mr. McClory's operation, and he is not here. I am having a little difficulty with this, myself.

Mr. TREEN. I just wonder if we can ask Mr. Field if he would give us the name of the person to whom it is directed, and then if we can look through and find it.

Mr. FIELD. It is directed to the Secretary of State. It is for all State Department documents relating to recommendations for covert actions made to the National Security Council and the 40 Committee from January 20, 1965, to the present.

Mr. JOHNSON. I would like to ask a question.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. Is it your intention to get all documents that were utilized in the preparation of the recommendation or just the recommendation to the National Security Council itself with respect to the covert action?

Mr. FIELD. Mr. Johnson, I don't believe we can get the documents leading up to the document that finally went to the National Security Council because those would be recommendations made by mid-level officials, and I believe the committee has expressed itself on that matter.

Mr. JOHNSON. It is my understanding that the intention is simply to get the document that went to the National Security Council and not all the documents relating to what went to the National Security Council; isn't that correct?

Mr. FIELD. That is correct.

Mr. JOHNSON. So what you really want to say is all State Department documents recommending covert action made to the National Security Council.

Mr. FIELD. That amendment may well be appropriate.

Mr. JOHNSON. I would make that amendment and then move the adoption. I guess I have two motions there.

Mr. FIELD. The gentleman asked unanimous consent to amend the subpoena. Would you repeat the amendment?

Mr. JOHNSON. That the subpoena be amended to provide for all State Department documents recommending covert action made to the National Security Council—not all of those documents relating to the recommendation itself—that were generated within the Department.

Chairman PIKE. In other words, you don't want the documents of the State Department relating to other people's recommendations?

Mr. JOHNSON. It is my understanding that what is requested here is simply the document that went from the State Department to the National Security Council.

Chairman PIKE. But in many cases, the document, it would seem to me, would include the State Department comments on other people's recommendations.

Mr. JOHNSON. If that went to the National Security Council, isn't that what you are after?

Chairman PIKE. You will really have to ask Mr. McClory. Mr. Johnson. I think what he is after is the appearance of getting information from Dr. Kissinger, but I am not really sure.

Mr. JOHNSON. Well, I am just saving this is my understanding of what is requested, and I think that the subpoena has been enlarged to the point where you would have volumes and volumes of information that you don't really want; isn't that correct?

Mr. FIELD. And that we won't get.

Mr. JOHNSON. You won't get except in amalgamated form.

Mr. FIELD. We may get it that way.

Mr. GIAIMO. Would that include the Boyatt papers?

Mr. FIELD. No; it would not.

Chairman PIKE. Did you offer the motion to approve the subpoena as amended?

Mr. GIAIMO. Yes.

Mr. TREEN. I have an amendment.

Chairman PIKE. Now is the proper time. The gentleman will state it.

Mr. TREEN. I move the subpoena be amended to change the date from January 20, 1965, to January 20, 1961.

Chairman PIKE. Is there objection to the amendment of the gentleman from Louisiana?

Without objection, the amendment is agreed to. The question is on the issuance of the subpoena as moved by the gentleman from Colorado. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Present.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Present.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Present.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. TREEN. Aye, by proxy.

The CLERK. Mr. Treen.

Mr. TREEN. Present.

The CLERK. Mr. Kasten.

Mr. KASTEN. Present.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of eight ayes, five present, the subpoena is authorized.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1491–92 of the appendixes.]

Chairman PIKE. What is your next order of business, Mr. Field?

Mr. FIELD. Mr. Chairman, the next subpoena would be to the Director of Central Intelligence, and it is for all requests from the Central Intelligence Agency to the Internal Revenue Service from July 1, 1966, to date, for tax information and/or official action. This is in relation to the staff examination of dissemination of tax return information to the Central Intelligence Agency from the IRS.

Mr. HAYES. Mr. Chairman.

Mr. GIAIMO [presiding]. The gentleman from Indiana.

Mr. HAYES. May I be recognized for the purpose of speaking to the proposed subpoena?

Mr. GIAIMO. You are recognized.

Mr. HAYES. I would like to point out the schedule is overly broad, I think, in any regard and also deviates from the explanation by counsel. I would suggest that if anybody intends to move issuance of this subpoena, they withhold that motion until such time as the specific request is cleaned up.

Let me point out that you are talking about all requests for tax information and/or official action. I think it is so subject to misinterpretation—almost any kind of interpretation—that refusal could easily be made. Not only that, but any kind of compliance could be considered compliance.

Mr. DELLUMS. Would the gentleman yield?

The first two words are important. It says "all requests."

Mr. HAYES. That is right.

Mr. DELLUMS. "From the Central Intelligence Agency to IRS" for certain information. It is not, as I read this subpoena, asking for the tax information and/or official action. It said all requests for information, or requests for specific action. It is not asking for the information itself.

Mr. HAYES. First of all, I think in order to correct you, there isn't anything specific about this request. It simply says all requests for tax information and/or official action. Now definitions of what official action could be, definitions of what tax information is, I think simply gives rise to having literally trunkloads of many kinds of innocuous things down here, along with what we may or may not be looking for. I don't know quite what we are looking for. I have an idea. But I would suggest this one could easily be cleaned up and a little more work put to it.

I would simply ask you if you would do this, because I can't support it in the present form.

Mr. DONNER. I understand your feelings, Mr. Hayes. However, in consultation with the staff member who prepared this subpoena—Mr. Hughes—what we have come up with in the investigation is that there were apparently informal mechanisms by which a relationship existed between the IRS and the CIA, and they are only represented by, for example, memos of conversations.

Mr. HAYES. Would you suggest, then, that is an appropriate thing to subpoena? In the law, memorandums of conversations in handwriting or typewriting or other written form are perfectly acceptable as evidence and, of course, we can even go beyond that here, I think.

Mr. DONNER. I was about to concur with you and say that it may be appropriate that the subpoena be amended to include all written requests and memoranda of request, I think your suggestion is well taken, and I know the staff would appreciate it if you would move in that regard, sir.

Mr. HAYES. I do move at this time, then, that the schedule of the subpoena be amended to read all—

Mr. GIAIMO. Are you offering an amendment?

Mr. HAYES. Yes, I would like to at this time, Mr. Chairman, move that appropriate wording be added to the schedule by staff, or I would suggest just simply that all memoranda of request be produced relating to the subject matter, tax information—and I assume you mean Internal Revenue Code information.

Mr. GIAIMO. Are you writing an amendment or stating an amendment?

Mr. HAYES. Mr. Chairman, no, I am not. I would simply allow staff—

Mr. GIAIMO. Has the gentleman's time expired?

Then the gentleman is still recognized.

Mr. HAYES. I have nothing further.

Mr. DELLUMS. Mr. Chairman.

Mr. GIAIMO. The gentleman from California.

Mr. DELLUMS. I would like to propose an amendment along the lines suggested by counsel; and with unanimous consent getting counsel to state the language, I would offer that amendment.

Mr. DONNER. It is proposed, then, sir—

Mr. GIAIMO. You are asking for unanimous consent. Is there objection to proceeding in this way? The Chair hears no objection. Go ahead.

Mr. DONNER [continuing]. That the schedule annexed to the subpoena by the committee be amended to read "all written requests and memoranda of requests from the Central Intelligence Agency." The balance of the wording would be the same.

Mr. DELLUMS. I so move that amendment, Mr. Chairman.

Mr. HAYES. Mr. Chairman, if I could ask Mr. Donner again: Do you think that the term "official action" needs any further elucidation in the schedule?

Mr. FIELD. I think what that refers to are the cases where IRS officials initiate an examination of a CIA proprietary—

Mr. HAYES. Should we specify that?

Mr. FIELD [continuing]. And some action is taken to stop the audit. We want to know how many times that took place and whether they continue to audit.

Mr. DONNER. There are also suggestions that in certain instances—again, I concur. As I understand your reading, Mr. Hayes, it is that where it is possible that agencies or instrumentalities or businesses, let's say, who are doing business with the CIA, had similar action taken, this would be included. It then also includes the area where there were convenient relationships between the CIA and IRS which called for certain action of one agency or the other. So I must say that sometimes the action—the word action, I concur, has a certain quality—is intended to cover a broad spectrum of relationships between two executive agencies.

Mr. HAYES. You think it is adequate?

Mr. DONNER. I understand your feelings for specificity; however, the relationships have sometimes an ambiguous or amorphous quality that are not susceptible to exact definition. I understand that what I am saying is not being completely responsive to you, but that is the best answer I can give you.

Mr. GIAIMO. The gentleman from Wisconsin.

Mr. KASTEN. Mr. Chairman, first of all, I don't believe there is a motion before us to—

Mr. GIAIMO. There is a proposal to approve a subpoena.

Mr. DELLUMS. And I have offered an amendment.

Mr. GIAIMO. With a unanimous consent request to amend the subpoena.

Mr. DELLUMS. Yes.

Mr. KASTEN. So there is no motion before us.

Mr. GIAIMO. As I understand it, there is a proposal by the staff that we take up the subpoena as amended. Does someone move that, so at least we will have an item for discussion?

Mr. DELLUMS. I move it.

Mr. GIAIMO. The gentleman from California moves for adoption of the subpoena as amended. Is there discussion?

Mr. KASTEN. Mr. Chairman.

Mr. GIAIMO. The gentleman from Wisconsin.

Mr. KASTEN. I would like to speak against the motion. I think with the problems we are having in defining the materials we need, and in the absence of Mr. McClory—who is supposed to have been working with this—a number of questions haven't been answered. I think it would be most proper for the committee not to issue the subpoena until we are able to act in a more businesslike, deliberate way. I think that the issuance of subpoenas is very important. We spent an hour this morning talking about the importance of subpoenas, and we are sitting here pasting this thing together with paper clips and Scotch tape. As far as I am concerned, this is not the method that the committee ought to be following in issuing a subpoena, and a delay of 1 day—until we meet tomorrow—or until next week would not, in my opinion, be critical.

I would hope that the motion does not pass.

Mr. DELLUMS. Mr. Chairman.

Mr. GIAIMO. The gentleman from California.

Mr. DELLUMS. One comment to my distinguished colleague: I do not see that what we are doing this morning is in any way different from the legislative process entered into by any subcommittee or committee of this House; and that is the right of any Member to offer an amendment to any question proposed to the floor. The characterization of paper clips and scissorcutting, I think, is inappropriate. It is always the legitimate business of any committee to amend any proposition that comes before it.

Mr. GIAIMO. The gentleman from Louisiana.

Mr. TREEN. Two questions: One, what efforts have been made to obtain the information and, second, why the date of July 1, 1966? Have we had some written request prior to now?

Mr. FIELD. I think Mr. Hughes, who has been working on this, can answer these questions.

Mr. DONNER. It was a date chosen arbitrarily with the idea of not making the request too onerous and trying to limit it to a particular time frame.

Mr. TREEN. What efforts were made to obtain the information prior to drawing up the subpoena?

Mr. DONNER. This is Mr. Hughes, a member of our staff.

Mr. HUGHES. Mr. Treen, the efforts made were about once or twice a week to request the CIA contact man to deliver the material. There was a constant putoff of my request in favor of some other sort of work.

Mr. TREEN. Did you ever put your request in writing, sir?

Mr. HUGHES. Yes, I did.

Mr. TREEN. The letter is from you to the CIA; is that correct?

Mr. HUGHES. The letters were from Mr. Field, yes, but I wrote them.

Mr. MURPHY. Would the gentleman yield?

Mr. TREEN. I would be glad to.

Mr. MURPHY. Mr. Treen, No. 1, this is well within the direction we received from the House in our resolution—to look into the operations of the IRS and the Central Intelligence Agency.

Mr. TREEN. I am not quarreling with that.

Mr. MURPHY. I know, and I hope the gentleman doesn't think I am quarreling with him. But for a point of clarification, I think we have an instance here far more important than what the CIA is doing overseas. It is what the CIA allegedly has done domestically—in the United States. To me there is no more important thing at stake than the rights that are afforded every citizen of the United States. I can almost accept some activities done overseas directed at foreign nations that are trying to dominate this Nation.

What I cannot accept—and I want to know if it is going on—is whether the CIA, in its intelligence-gathering activities, or the NSA, in its intelligence-gathering activities, are in any way violating the rights of American citizens.

I think of all of the subpoenas—maybe this is not worded correctly—but of all the subpoenas here today, this makes more sense to the citizens of the United States than any other one thing, and I think this committee should have been spending much more time in this area than the areas we have been involved in.

Mr. TREEN. May I say to the gentleman that I am inclined to agree with him on that, and the purpose of my question is to determine what efforts we are making prior to our going to subpoenas. It seems here, and my followup question would be, what reasons did they give, Mr. Hughes, for not supplying this? It wouldn't be a national security reason or anything like that?

Mr. HUGHES. No, sir; they gave as their reason only that they were busy with other things and didn't have time to attend to it. They gave no reason of national security whatever.

Mr. TREEN. That is all the questions I have. I would move as an amendment to the subpoena that the date be changed to July 1, 1961. As Mr. Murphy points out, if we are really interested in finding out what these agencies have done on the domestic scene, I see no reason for the arbitrary date of July 1, 1966.

Mr. GIAIMO. Is there objection? The Chair hears none, and the amendment is adopted.

Mr. MURPHY. I move the adoption of the subpoena, Mr. Chairman.

Mr. GIAIMO. The question is on the motion. All in favor—

Mr. KASTEN. Mr. Chairman, point of order. I think the votes are here, but I think my motion to delay this until we have it in proper form would take precedence. I would like a—

Mr. GIAIMO. Did you make the motion to delay?

Mr. KASTEN. I made the motion to delay this. Mr. Treen was out of order in his motion, and I just want to ask the ayes and nays. We don't need a record vote.

Mr. GIAIMO. The question is on the motion of the gentleman from Wisconsin. We will take a rollcall vote.

Mr. KASTEN. I just want to get the motion finished. The rollcall vote on the subpena will be sufficient.

Mr. GIAIMO. All in favor of the gentleman's amendment, signify by saying "aye".

[Chorus of ayes.]

Mr. GIAIMO. Opposed, no.

[Chorus of noes.]

Mr. GIAIMO. The Chair is in doubt. Those in favor will raise their left hands.

Those opposed?

Six and three. The motion is not agreed to.

Mr. TREEN. Mr. Chairman, I guess I have to renew my unanimous request to change the date to July 1, 1961.

Mr. GIAIMO. Is there objection? The Chair hears none. The unanimous-consent request is made, and the date will be changed.

Now, the gentleman from Illinois is seeking recognition.

Mr. MURPHY. Yes, Mr. Chairman. If Mr. Dellums would yield to me, I think he made the motion beforehand, but I would like to move the question of the subpena and the schedule attached thereto as amended.

Mr. GIAIMO. The question is on the motion. We will have a rollcall vote on this. The clerk will call the roll.

The CLERK. Mr. Stanton?

Mr. GIAIMO. Mr. Stanton votes aye by proxy.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Present.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory?

Mr. TREEN. Aye, by proxy.

The CLERK. Mr. Treen?

Mr. TREEN. Aye.

The CLERK. Mr. Kasten?

Mr. KASTEN. Present.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Giaimo?

Mr. GIAIMO. Present.

Nine "ayes," three "presents," and the motion is agreed to.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1493–1494 of the appendixes.]

Chairman PIKE. Does the staff director have any further business?

Mr. FIELD. That concludes our subpoenas. I would point out to the members we have a briefing book prepared for this afternoon, which is available. If you like, we can bring it to your offices and somebody from the committee will stay there. It deals with the question of CIA involvement with the media and the detailee program. The books are ready.

Mr. GIAIMO. The members are advised of the information the staff director has.

The gentleman from California seeks recognition for what purpose?

Mr. DELLUMS. To ask a question of counsel.

Mr. GIAIMO. OK. I am in a hurry to bang the gavel.

Mr. DELLUMS. Yes; it just occurred to my colleague from Illinois and me that perhaps the last subpoena, directed toward the Central Intelligence Agency with respect to IRS information, may very well also be directed to IRS. Can the staff tell us whether or not that is, in fact, true, or should we not vote a similar——

Mr. HUGHES. The IRS has cooperated in furnishing similar information.

Mr. DELLUMS. I thank the gentleman.

Mr. GIAIMO. The committee will stand in recess until 2 p.m. this afternoon.

[Whereupon, the committee recessed until 2 p.m. The hearing at that time, relating to CIA, the media, and detailees, is printed in part 5.]

U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

THURSDAY, NOVEMBER 13, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 9:07 a.m., in room 2118, Rayburn House Office Building, Hon. Otis G. Pike [chairman] presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; and Peter L. Hughes III, counsel.

Chairman PIKE. The committee will come to order.

I want to start with what I hope will be a relatively noncontroversial matter.

You have before you a schedule of proposed hearings through which, in addition to our ongoing investigations, we will conduct and hopefully conclude our work.

There is a rather acute compression of our schedule toward the end, as you notice. Let me share my thoughts with you on why I think this would be appropriate.

As you will recall, we started at the lowest common denominator, which was the money. We then moved to the product. We moved from there to the risk. If you will look at the last four hearings, I think we ought to address ourselves at the conclusion of the hearings—now that we have some background information—to the largest questions of all: whether there should be covert actions, and the legal issues involved in whether or not the President has the right to authorize any and all covert actions without the consent or knowledge of Congress, or whether he has the right to authorize some but not all. So the legal issues would be the subject of a hearing.

Then we have the basic question of what role Congress should play in oversight and how that oversight should be structured and conducted. This is a very real problem. It gets into the so-called Harrington and Nedzi situations. It gets into the question of the Rules of the House of Representatives, particularly as they apply to the access of all Members of Congress to committee materials; and it gets to the problems which the agencies have in multiple briefings of many committees of Congress. I think we should have a hearing on that issue.

Finally, we get to a rather broad area, which the staff has labeled, for lack of a better title, "The Future of Intelligence."

None of these words are essentially my words. They do represent a pattern of the way I think we ought to go in concluding our hearings and I think we ought to get into the very largest questions of all: What sort of intelligence community should we support; what sort of intelligence activities should we support, et cetera.

I want to say that I have no great pride of authorship in this schedule. I have tried to accommodate the suggestions of the members as to what we should be doing. I will simply say, unless I hear magnificent screams of outrage from the various members, that this is the manner in which I propose to continue the hearings and wind them up.

Mr. McCLORY. Mr. Chairman, it is nice to start out the morning with something you have described as a noncontroversial matter, and I want to concur in that.

You are correct that this is something that has been discussed. I might say that I have discussed the program with the staff and I notice several of the items I suggested are scheduled. I think that is very good.

There was one other suggestion I made which I don't see it identified here specifically. That is something that several other members of the committee on both sides are interested in—the possibility of a few additional witnesses to give some balance with respect to some of these subjects.

Now, that possibly can come in on December 4 when you have scheduled a hearing on the subject of Tet.

Chairman PIKE. Tet is the subject of the wrap-up hearing on December 4.

Mr. McCLORY. I know we have talked about getting some expert testimony. I suggest this as a possibility, though I don't insist upon it.

Let me first say that I have pursued, in a very rapid way, this volume that was delivered to my office which outlines various areas and reviews aspects of the intelligence activity and options this committee might take in connection with our final report. It all seems to be covered there, but it might be worthwhile for us to have a few persons, who are not members of our staff, who have studied these matters in depth and who could come and perhaps offer something new.

Chairman PIKE. I agree with the gentleman completely. I think one of the most difficult jobs we are going to have in those last four hearings is getting witnesses to present both sides of the issue as to what our intelligence community ought to be doing.

I want expert witnesses who are knowledgeable, and I welcome suggestions from the members of the committee.

Mr. Treen.

Mr. TREEN. For December 4 I notice you have on the suggested schedule the Tet item, and I assume that is when we would hear from General Graham on Samuel Adams' testimony.

Chairman PIKE. That is correct.

I don't consider the committee or myself locked in concrete on this thing. If something else is revealed in the course of our investigation which seems to demand additional hearings and studies, we will certainly consider it.

Let us move now from something which I had hoped would be noncontroversial to something that has turned out to be controversial. That is the subject of where we stand on the subpoenas which were issued by the committee last week which were returnable last Tuesday.

Mr. Field or Mr. Donner, if one of you would tell us where we are as far as the returns on those subpoenas are concerned, we would appreciate it. Keep it noncontroversial as long as possible. Start with those that have been complied with.

Mr. FIELD. Thank you, Mr. Chairman.

The subpoena which has been complied with the greatest degree would be that which we issued to the CIA asking for all documents or memorandums indicating contact between the CIA and IRS. We received quite a large volume of material on that. It was not sanitized. ~~There were no deletions in it of which I was aware, and it seemed to be~~ very responsive to the subpoena.

I would say the second subpoena which would appear to be complied with would be the one requesting minutes of the meetings of the Intelligence Committee, the Working Group, and the Economic Intelligence Subcommittee of the National Security Council. Our interest there was to see how often these committees met and the type of subjects they discussed, whether they made decisions, and so forth.

Chairman PIKE. Would it be fair to state that the material we received indicates perhaps the reason we got such good compliance was that they didn't really meet very often?

Mr. FIELD. Yes, Mr. Chairman, I think it was interesting in that respect. The Economic Intelligence Subcommittee, for example—which covers a fairly important area of intelligence—has met once, I believe, since 1971. It made no decisions, so it was fairly easy to comply with the subpoena, I imagine.

The third subpoena which would appear to be in compliance—or which we could construe as being in some form of substantial compliance—was for minutes of the meetings of the Washington Special Action Group with respect to the October 1973 Mideast war, the Cyprus crisis, and the Portugal coup. We had received some information on this previously, and when we put it together with the information we received pursuant to the subpoena, it did give us substantial information as to the meetings—who had attended and what decisions had been made.

Mr. McCLORY. Mr. Field, when you spoke with me a couple of days ago—the day before yesterday I believe—you said that you had received all that you required with respect to NSA and you were awaiting DIA and CIA material. You received that, did you not?

Mr. FIELD. That would be on a fourth subpoena. The Washington Special Action Group meetings were in a different field.

Chairman PIKE. I want to make this clear on the record.

We subpoenaed the minutes of the meetings. Did we get the minutes of the meetings?

Mr. FIELD. We got a cover sheet from the minutes which summarized who were there, what topics had been raised, and what decisions had been made.

Chairman PIKE. That is not my question. Did we get the minutes of the meeting or did we get a summary of the minutes of the meeting?

Mr. FIELD. We did not get the verbatim minutes of the meeting. We got a summary sheet which was attached at the time of the meeting. In other words, it was not made up—

Chairman PIKE. It was not made up for our benefit?

Mr. FIELD. That is right.

Chairman PIKE. I would deem that to be substantial compliance.

Mr. KASTEN. Is it the opinion of the staff that the summary of the minutes of the meeting are sufficient for our purposes? Was the idea merely to find out if meetings were held and what was the subject matter of those meetings, or do we need, in your opinion, more detailed information on the minutes of the meeting?

Mr. FIELD. We weren't as much interested in the debate that took place in the meeting as whether they had met, how often they met, during a crisis. In other words, how good was this crisis mechanism.

Mr. KASTEN. Is it your opinion that you have what you need?

Mr. FIELD. I think we have enough.

I was also concerned that the internal resolutions may have raised an executive privilege problem. The summary did prevent us from getting on into that problem.

Chairman PIKE. We will have plenty to be controversial about, so let's just assume that there is substantial compliance on that one.

Mr. FIELD. The next subpoena related to intelligence information coming into the National Security Council in the period immediately after the outbreak of war in 1973 in the Mideast, up to the period when the U.S. troops were placed on alert. We have received quite a volume of material on that, primarily from NSA; and from my quick review it does not seem to be sanitized. There is apparently additional material on the way from DIA and CIA on that. I think we have already received some information from the CIA in response to this.

Chairman PIKE. The response is, "the check is in the mail"?

Mr. FIELD. Yes, and the material we have received is adequate.

There is a subpoena to the State Department asking for all of their recommendations for covert action—any instances where the State Department, on its own, recommended covert action.

The next subpoena is for 40 Committee minutes indicating any decisions made to undertake covert action programs.

And this subpoena is the information relating to SALT I Agreement compliance.

Beginning with the State Department's subpoena for their recommendations of covert action, that information was compiled at the Department as of Monday. We received a letter to the chairman indicating that this material had been sent to the White House.

Chairman PIKE. When did you receive the letter to the chairman?

Mr. FIELD. The letter was received Monday afternoon.

Chairman PIKE. I would only say that the chairman received a letter Tuesday morning. We can do with a little better liaison here, but that is all right.

Mr. FIELD. The material had been sent to the White House. In trying to locate the information on Tuesday morning, we learned that it had been sent to the Justice Department for their review as to whether there should have been or might be an executive privilege problem. It has apparently been returned to the White House and this morning, about an hour ago, a letter came to the chairman—Mr. Chairman, do you have a copy of that letter?

Chairman PIKE. I have the letter, yes. That is the one I was referring to.

Mr. FIELD. This is a followup to the letter on Monday. This would indicate that there is still a decision to be made as to whether executive privilege will be invoked. Would you like me to read the letter, Mr. Chairman?

Chairman PIKE. I will read the letter. I received that letter just before this meeting. It is dated November 13:

DEAR CHAIRMAN PIKE: As stated to the Staff Director, Mr. Searle Field, by William Hyland in a letter dated November 10, the State Department has reviewed their files in response to your subpoena of November 6. They have identified documents that indicate that on eight occasions the Department of State submitted recommendations concerning the issue of Presidential approval of covert activities.

These documents were identified late Monday and the White House, along with other officials of the executive branch, are reviewing them prior to a decision by the President concerning whether or not they should be made available to the committee.

In view of the very short time we have had to undertake this review and the demands on the President's schedule, we respectfully request additional time to respond to your subpoena. We believe that 1 week from today should be sufficient.

Thank you for your cooperation.

Sincerely,

PHILIP W. BUCHEN,
Counsel to the President.

[Mr. Buchen's letter is printed on p. 1497 of the appendixes.]

Mr. McCLORY. Mr. Chairman, I would like to move that we defer for 1 week any further action with regard to that subpoena to see what develops between the staff and the White House and determine whether or not we get the information or get to look at the information, or whether the question of executive privilege is or should be raised. That will give us time to determine what appropriate steps we should take, if any.

Chairman PIKE. Mr. McClory, I can't speak for the other members of the committee. I will only say that I would be inclined to go along with your motion, had it not been for the fact that yesterday a member of the White House staff told a member of our staff there was no way we were going to get that information.

I think the Bicentennial will have come and gone and we will still be subpoenaing documents and expecting to get the information contained therein. I am going to vote against the motion.

Mr. McCLORY. Mr. Chairman, let me just say in response to that, I initiated these subpoenas.

Chairman PIKE. I am aware of that.

Mr. McCLORY. I am aware of the staff's need for all of them, and I am anxious that we get all of the information we should appropriately have and that we are legally entitled to.

With regard to this particular material, I am not certain at this point what the legal or constitutional aspects are. I think it is something we should at least give a little additional time to, so that the staff can see if it can be resolved.

I might say that the return date was very short with regard to these subpoenas, and I will be making a similar motion with regard to the other subpoenas on which there is not full compliance, with the expectation that the matter will be fully, finally and, I hope, satisfactorily, resolved within that extended period of time.

Chairman PIKE. Mr. McClory, I would just like to say this:

First, I am impressed by your candor in stating that you initiated a subpoena as to which you now harbor legal and constitutional doubts. The time frame apparently was not quite as short as that which would ensue following the service of the subpoena because I have reason to believe that the White House had copies of the subpoenas before they were ever served.

Mr. McCLODY. If the chairman will yield further on that point: With regard to this particular subpoena, as I understand it, the subpoena, when issued, indicated State Department approval of covert operations and, as I understand the mechanics in which this is carried out—although I am not entirely clear on it at this point—it is a recommendation from the State Department which then receives Presidential approval. There may be a slightly different issue involved than only the State Department itself, without Presidential approval, authorizing or recommending covert operation.

Mr. MILFORD. Mr. Chairman, I am in agreement with you insofar as the intent goes, but I am a little worried that our committee might be criticized for making its decision based on a hearsay report from an unnamed staff member as opposed to reacting to an official letter.

Chairman PIKE. If you would like the name of the staff member, I have no hesitancy in giving it to you. He is in the room.

Mr. MILFORD. I am talking about their staff member, not ours.

Chairman PIKE. So am I.

Mr. MILFORD. The letter itself stands as an official communication and I think perhaps our reaction might best be made to the official communication as opposed to a hearsay report.

Second, I was a little concerned, at the time these subpoenas were issued, because of the volume of the material that was subpoenaed, that perhaps even initially there wasn't sufficient time for compliance. Maybe a week wouldn't be unreasonable.

Chairman PIKE. I think we all know what is going on here. You ask that we wait for another week—and we can wait for another week. You say that we ought to be concerned with the official statements and, as I have indicated from the day I got on the committee, the official statements always promise cooperation. There has never been an official statement which says, "In no way are you going to get this information."

But the fact of the matter is that we don't get the information, and the unofficial staff level conversations are usually more accurate than the official statements.

Mr. MILFORD. I agree with the Chair. I am simply saying that perhaps the proper course might be to give them a week and then send in the troops if you need to.

Mr. JOHNSON. I don't find the request for additional time offensive in the context of their having to get to the President; but I cannot accept their notion that this is material that falls within the area of executive privilege.

I feel that is an extension of a doctrine which is unacceptable to me personally and I feel like we ought to get into the record just exactly what we are talking about at this point.

If you don't mind, I would like to direct some questions to the staff.

Chairman PIKE. Please proceed, Mr. Johnson.

Mr. JOHNSON. There is no problem with the classification situation. It is my understanding that they are raising no question about classification.

Mr. FIELD. That is apparently true. It is not being withheld because it is too highly classified.

Chairman PIKE. Who made the decision that this falls within the area of executive privilege?

Mr. FIELD. That apparently has not been raised.

Chairman PIKE. They say the doctrine of executive privilege can be raised or waived. Who made that decision?

Mr. FIELD. I think the only decision that was made was to refer it to the Justice Department to see whether or not there were grounds for such a decision.

Mr. JOHNSON. Do you know who made that recommendation?

Mr. FIELD. I don't know. I would assume the White House counsel's office.

Mr. JOHNSON. Do we know what the Justice Department recommendation was?

Mr. FIELD. We do not know that.

Mr. JOHNSON. We don't know who from the Justice Department advised the White House as to the delay? Do we have no information on that?

Mr. FIELD. That is right.

Mr. KASTEN. I think this is the very question that has been raised and it is the reason why the gentleman from Illinois is asking for a week delay. They are not sure whether or not to begin for the first time to invoke executive privilege. They haven't been able to decide that, and because that decision hasn't been made they are asking for more time.

I think it is not correct to say that you reject the concept of executive privilege. Obviously, there are people in the executive branch who reject it as well and are trying not to have to go through executive branch channels.

Mr. JOHNSON. I don't want to argue with the gentleman. He can have his own time. I just want to get this on the record. From whom are these documents? You need not identify the persons, just the offices.

Mr. FIELD. We have not seen the documents so I can't answer that.

Mr. McCLORY. The other point involved is that they do involve other administrations and other Presidents. And there is a further question on executive privilege, probably as to whether or not one President can raise the issue of executive privilege with regard to a prior President, or whether he wants to.

Mr. JOHNSON. That is exactly my point. These documents, as I am led to understand, were sent by one Secretary of State in a previous administration to another President. Perhaps two Presidents might be involved.

The doctrine of executive privilege, as far as I am concerned, cannot be extended to anything in that situation. The privilege was not asserted by the President to whom they were directed. They were left in the files after the President left office—which means, as far as I am concerned, that they become public documents and would

prevent President Ford from having the right to even consider that they would not be made public.

We don't know whether the recommended action was carried out in each instance; and by saying that the doctrine of executive privilege applies to communications from all secretaries of departments to all Presidents who have previously served, but who did not assert the privilege, to me is an extension of the doctrine which I personally will not accept. Under these circumstances, I don't feel they even have the right to waive the doctrine. I don't want to be on the record personally as saying that the President has the right to waive the doctrine, because the doctrine does not apply. I don't want to be on the record as giving any kind of approval to that kind of doctrine.

Chairman PIKE. Mr. Johnson, I agree wholly with your comments. I would just like to add that it does seem to me that if they really wanted to cooperate in the manner which they always allege they want to cooperate, the letter which I received 5 minutes before this meeting began would have been received prior to the return date of the subpoena—which was last Tuesday. As of last Tuesday, we had received flat zero, nothing, in response to this subpoena. And there were indications that we weren't going to get anything on this subpoena. So what I think we are getting is, at this point, delay for the sake of delay.

Does anybody else wish to be heard?

Mr. Aspin.

Mr. ASPIN. Mr. Chairman, let me ask you, if Mr. McClory's motion does not carry, what happens then? If they have not complied with the subpoena by its return date, where are we?

Chairman PIKE. That is a question which I raised the day we issued the subpoena, and the question becomes whether this committee is going to do anything about it. I simply don't know the answer to that question, Mr. Aspin. There are some of us who apparently are more willing to do something about it than others, and I just plain don't know. That will be a committee decision, and not the Chair's.

Mr. ASPIN. What are the options?

Chairman PIKE. Nothing. That is always an option.

Another option is to do nothing and say in the report that we did nothing and that our investigation was hampered throughout its course, not only by lack of cooperation, but by straightout refusals to comply with the subpoenas of the committee.

A third option would be to go back to the House for a resolution by the House—as we discussed doing with Mr. Colby and decided to do, and as we discussed doing with Mr. Kissinger and decided not to do.

Another option would be a straightforward vote on contempt of Congress, I suppose, by this committee.

Mr. McCLORY. I would be in a much better position to arrive at a decision as to what to do after I had this opportunity to determine whether or not executive privilege is being weighed; whether it is applicable; getting advice as to its efficacy; whether it is available for one President to raise with regard to another administration, and other aspects such as that.

Meanwhile, it would certainly be my hope that if there is any question about executive privilege, the information we are seeking would

be made available notwithstanding the threat of that doctrine being applied here.

Chairman PIKE. Mr. Aspin, led me say, because of our own time limitations today, I think it would be unwise for the committee to vote on a course of action today—immediately, right now—without having had this dialog.

I would suggest that if Mr. McClory's motion is defeated I would probably call an additional meeting of the committee tomorrow to vote or discuss a course of action.

Mr. ASPIN. Thank you, Mr. Chairman.

Mr. TREEN. Mr. Chairman, it seems to me we need to consider the totality of the subpoenas that were issued just a few days ago in determining whether we should indulge in some delay.

We asked for a great deal of material in these five subpoenas. I think the feeling among several of us is that the time given was not very realistic, considering the mass of material and considering the difficulty of extracting a lot of this material from a large volume of other records.

I understand it has been a very large task. I understand people representing the administration have met over the weekend—until late Saturday afternoon and one night they were up until 4 a.m., going through material. I think we need to recognize that we are not dealing with just one subpoena here—that we are dealing with the five of them, and that we did impose a very large task on these people in getting these materials together in that short a period of time. So I hope we will indulge in some additional delay.

I would assume that the material we have received will keep our staff busy for the next several days. We have enough to work on and it will not be any hardship to defer this action for another week. I hope the motion will carry, and I yield to Mr. McClory.

Mr. MCCLORY. I want to say the chairman has mentioned the lack of cooperation several times—that we don't get cooperation.

I want to say very forthrightly, as I have said before, I think we have had very, very good cooperation. As a matter of fact, the criticism of the Director of the CIA has been that he has been too forthcoming with regard to this committee.

I have confidence, myself, that if we should have these documents, legally and constitutionally, we will have them—or we will have the material which is contained in them, which is what we want insofar as our investigation is concerned.

With respect to other subpoenas about which we may have discussion, I feel again we are going to get what we want and what we need, and the mere fact we haven't gotten it today doesn't mean that it is not going to be secured. I think we have been rather short in time we have allowed for the return. So I would urge again—as I have before, and I think successfully—cooperation on the part of the administration, which I think we have substantially received.

Chairman PIKE. I would just like to address myself to the question of the time which they have spent in getting these documents together.

Actually, they could have done it an awful lot faster if they had provided the documents than in spending time deleting things from the documents. Because, if you look at those things which have been

received, large quantities of time went into hiding stuff from us rather than providing it to us.

Mr. ASPIN. Mr. Chairman, I realize that we are discussing one subpoena at this point, but is there a similar problem with all of them? Is that right?

Chairman PIKE. As to this problem, we have nothing. As to this subpoena, we have nothing. I think that while the motion is going to be the same as to two other subpoenas, the factual backgrounds are different.

Mr. ASPIN. Is executive privilege the potential problem in all cases?

Chairman PIKE. No.

Mr. ASPIN. Is it something like that?

Chairman PIKE. No.

Mr. McCLORY. As I understand it, there are some documents that were not located until last night or this morning, which I am quite sure the staff is going to be able to look at. They just need the time to do that. There was a search made for them. The representation was made to me that at least what we were looking for was not in the possession of the National Security Council, and I guess it was not in the possession of the National Security Council. It was at the White House and, as I also understand it, that material will be made available.

Chairman PIKE. Are you ready for the question? The question is on Mr. McClory's motion that we delay any action on this subpoena to the State Department for 1 week.

All those in favor of the motion signify by saying "aye."

Contrary, "no."

The Chair is in doubt.

The clerk will call the roll.

The CLERK. Mr. Stanton.

Mr. STANTON. No.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. No.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. No.

Mr. Giaimo votes no by proxy; Mr. Murphy no by proxy, and Mr. Pike votes no.

By a vote of four ayes and nine noes, the motion is not agreed to.

Mr. Field, will you discuss the next subpoena in doubt?

Mr. FIELD. I think it might be helpful to read the exact language of the subpoena since it is fairly brief. It was for "All 40 Committee and predecessor committee records of decisions taken since January 20, 1965, reflecting approvals of covert action projects."

Now, Mr. Chairman, the background of this subpoena is that there was a letter sent by you to the President in late October, asking that we be given access to these records. As a result of that letter, we were given something which we did not feel was adequate to do our investigation. That was just a list of covert action approvals by date and two or three words: "Media Project." That is all. They didn't tell us anything about it.

We were trying to determine whether there is a difference between the types of covert action, and whether or not covert action projects which are more questionable, or which get this country in more trouble, are those which are directed unilaterally by the President or by his Adviser for National Security Affairs—as opposed to those that are recommended by either the State Department or the CIA.

In order to do this, we need to know the substance of the projects that the President directs, compared with those that are generated by the intelligence community. We need to have the whole range of programs. We need not get into the "nth" degree of detail, but we need to have a general idea of the program—what it cost, how good the decisionmaking process was, and where it took place.

We began discussing this subpoena on Friday. On Saturday we met with Colonel McFarland of the National Security Council. We met with Mr. Charlie Leppert of the White House staff. We discussed what we were referring to here. That it was not all minutes of every meeting in the sense of verbatim minutes, but rather a "minute," in a word-of-art sense—a one- or two-paragraph statement, usually, indicating the approval of a covert action project by the National Security Council and the 40 Committee in the past few years, and prior to that by the 303 Committee.

We also referred to documents we have received on one or two projects of which the committee is aware, which are these minutes, and there seemed to be a general understanding as to the type of document we were referring to.

It appears that those documents comprise a stack of paper, let's say an inch and a half thick. They are not truckloads of documents, or file drawers full of documents, or anything like that. Those documents had been assembled prior to this period in order to give us the materials which we requested last October, by your letter to the President, Mr. Chairman. There did not seem to be any particular time element involved, or any particular question as to what documents were involved.

As of Monday, those documents began coming in and they were heavily sanitized, I suppose you might say. I believe the committee has some examples in front of them—a few pages which I do feel are representative of the type of information which has not been deleted from these reports. Frankly, there is probably no reason for them to even be classified "secret" any longer. Usually the information left in merely says something like "A CIA proposal was approved on April 16, 1973," and that is about it. It might even give the partici-

pants in the meeting, or if there was a telephonic situation, it might give the participants in that particular discussion—which we could probably tell anyway, from knowing who was on the committee.

Mr. McCLORY. You showed me all of these documents and I went over them. It is my understanding that, as far as your investigation on behalf of the committee is concerned—inspection of the original documents, the opportunity to make such notes as are necessary in order to carry out this objective—you might not get all of the secret information that may be contained there; but you would be able to identify different types of covert operations and different ways in which they were undertaken. And that is really what you want to get from this material.

Is it also true that Jack Boos was designated from our staff to go to the White House or the Executive Office Building? It was my understanding that was going to be made available to him yesterday, but it was not made available.

Mr. FIELD. There are two events in that sequence that are important.

First, I believe Aaron Donner was told the night before last that if we came down to the White House yesterday morning these documents would be available to us. He and Mr. Boos and myself did go down to the White House—

Mr. McCLORY. And I requested they be made available—to Mr. Boos, who identified it specifically.

Mr. FIELD. They were not made available to us. There was some confusion on that.

Later in the afternoon, we sent Mr. Fred Kirschstein down to the White House to specifically see—even if he couldn't look at the documents—if, for example, Colonel McFarland could sit with an original set of documents on his side of the table. We would sit there and we could ask questions: What was the nature of the project; what was the country in which it took place; how much did it cost; how was the decision made; what were the reasons for the decision.

Literally none of that information was made available to him.

I think we have tried to test every conceivable item of information that could be added to this and I think we are down at the point now where there really is not going to be any further information forthcoming.

Mr. McCLORY. I am not going to make any motion with respect to this.

Mr. KASTEN. You are trying to determine whether or not the procedure of the checks and balances within the executive branch works. That is, whether or not the decisions are being made by the National Security Council, the 40 Committee, and are going through a system of checks and balances.

Mr. FIELD. It is a little more than that.

I think what we are trying to show here is that where that process is used and honored, you generally tend to get a better product.

Mr. KASTEN. I understand there were more than 100 covert operations during the time period we are talking about, and there are a number of questions that have been raised about the details of those covert operations. Our committee is not interested in the details of those covert operations. Frankly, the committee isn't interested in the countries in many cases. We are interested in the process.

Mr. FIELD. I would also point out, Mr. Kasten, we have not subpoenaed materials relating to ongoing and recent programs. We didn't want to jeopardize them.

Mr. KASTEN. Would there be a way for us to determine whether the process is working without getting the details of the 100 or more covert operations?

For example, would it be possible for you to draw up a subpoena that would ask for them to deliver to us the minutes, or the background, of those decisions that were made for covert operations and which did not include a normal 40 Committee analysis and review?

Would it be possible for you to put together some kind of a subpoena like that?

Mr. FIELD. I understand what you are driving at. We tried that briefly yesterday afternoon.

In other words, if we couldn't get the information about all of them, could we at least get information as to those the President or his Assistant for National Security Affairs had directed, where they had unilaterally undertaken covert action? We did not get that information.

Mr. KASTEN. Did they refuse to give you that information?

Mr. FIELD. Yes.

The additional point I would make, however, is that it may be difficult to make our analysis with just that information, because you have to have something with which to compare it. You would not know whether those operations were better or worse, more questionable or less questionable, than the other operations if you had nothing to compare them with.

You have to have at least a representative sampling of the other decisions that were made.

Mr. KASTEN. But we don't need all of the decisions and details on all of the operations, in any case, do we?

Mr. FIELD. I am hesitant to say that we don't because I would want to see what we would get through negotiations—whether or not, for example, we would pick the random sample from the non-Presidential decisions or whether they would be picked by somebody else. At this point I would hesitate to say anything on that.

Chairman PIKE. If there is to be no motion from anyone on this subpoena, Mr. Field, would you discuss the last and perhaps the most controversial subpoena?

Mr. FIELD. The last subpoena, Mr. Chairman, is for the information on the extent of SALT I agreement compliance.

It reads:

All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Department of Defense, and the intelligence community staff since May 1972, relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok Agreement of 1974.

Chairman PIKE. As to this particular subpoena, let me try to paraphrase the issue as I understand it, simply in the interest of saving time.

In my judgment, when our staff went down to the White House yesterday, they were not told the truth about what information was

available. We are dealing with something here which is highly controversial and as far as we are concerned, it has to do, I suspect, with the old question we have run into time and time again of political judgments affecting intelligence reporting. What happened yesterday—and correct me if I am wrong—was that Mr. Donner and Mr. Field were told that certain documents were not in the possession of the National Security Council.

One of the things of which we were aware was that there was, at one point last month, a letter requesting a meeting—

Mr. FIELD. Last fall, Mr. Chairman.

Chairman PIKE [continuing]. Last fall. I am sorry.

Requesting a meeting of the National Security Council; and the representative of the National Security Council yesterday told Mr. Donner and Mr. Field that they had no copy of any such letter. I believe that either they just were not telling the truth or there is a very high degree of gamesmanship going on on the question of who has possession of documents.

Mr. McCLORY. We did receive the official printed document on the monitoring of compliance with the SALT I agreement?

Chairman PIKE. We received a series of documents prepared by the U.S. Intelligence Board—or issued under the name of the U.S. Intelligence Board—which is the final conclusion reached by the U.S. Intelligence Board as to compliance with the SALT I agreement.

Mr. McCLORY. Well, we wanted those, too, did we not? There are the detailed monitoring reports which we received. I don't know whether the disclosure of those items is confidential, but there is an additional item that we wanted, and as I understood it, it was not received. It was my understanding it would be made available—the document with respect to alleged noncompliance.

This is more or less the subject of magazine articles that have been written—one by former Secretary of Defense Melvin Laird, who has commented on it, and Admiral Zumwalt, who has commented on it, and an article in "Aviation Week" delineates the alleged noncompliances. There is some official information regarding this. That is what we wanted to look at. As I understood it, that was not made available yesterday. I understand that it has been located and will be made available.

Mr. Chairman, the only motion I would make with regard to this is that whatever action the chairman may want to take on this be deferred until tomorrow, because I think before we reach the point—

Chairman PIKE. Mr. McClory, I would simply say to you that I am not proposing that we take any action on anything before tomorrow.

Mr. McCLORY. I understand.

Chairman PIKE. But let's make it clear that we subpoenaed all documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission; we did not get them. From the Central Intelligence Agency; we did not get them. From the Defense Intelligence Agency; we did not get them. And from the National Security Agency; we did not get them. Nor did we get them from the Department of Defense. I think what you would describe as the one document we did get was the USIB reports on the subject.

Mr. TREEN. That was the only thing.

Chairman PIKE. Yes.

Mr. Johnson?

Mr. JOHNSON. Is it clear that the subpoena was directed to the person who properly had custody of all these documents?

Chairman PIKE. I believe that a subpoena addressed to the Special Assistant to the President for National Security Affairs is a subpoena addressed to the proper person. I think they are playing games with us as to who has the documents. Our staff was told yesterday the documents were not there. They found them subsequently.

Mr. McCLORY. Could I ask one more question of counsel, Mr. Chairman?

Chairman PIKE. Certainly.

Mr. McCLORY. Again, in this case, would it be satisfactory for purposes of your investigation to inspect the documents and make notes with respect to them?

Chairman PIKE. I would simply say, before counsel responds, that it might be satisfactory to counsel, but it would not be satisfactory to me.

Mr. McCLORY. Well, the reason I asked that is that I supported the issuance of the subpoenas in order that the staff might make a full and appropriate investigation, and I am just inquiring as to whether or not the investigation could be completed by examination of the documents without physically delivering the documents to the committee.

I frankly am a little worried about this subject. The SALT II agreements, while not currently underway, are still in the offing, and it is an ongoing operation. I want to be very, very careful about our getting involved in intelligence activities with respect to ongoing negotiations, but at the same time I want to be sure that the intelligence information which is being secured is being utilized and is being reported accurately; and that is why I think the question of faithful reporting and appropriate utilization can be determined without the physical delivery of highly sensitive documents to this committee.

Chairman PIKE. Mr. McClory, I want to state a couple of things. First, we are not looking at the negotiations on SALT II. We are looking at the compliance with SALT I. I will state what is only my personal judgment, and that is that a political decision has been made that nobody is to allege noncompliance with SALT I. Why that political judgment has been made, I don't know, but I believe it has been made.

I think that this Congress and the American people are entitled to know not the details of the negotiations of SALT II, and we are not asking for any such thing. But we are entitled to know whether there has, in fact, been compliance with SALT I and whether there is, in fact, any substantial and documented body of information indicating that there has not been compliance with SALT I.

Mr. McCLORY. May I pursue my point, then, since you raise that subject. Mr. Chairman?

The question of interpretation of SALT I is certainly something not cut and dried; it is not so entirely clear that no matter what the Soviets do you can say it is full compliance or it is a deliberate non-compliance.

I think we get into a highly sensitive area if we are going to sit here in judgment and second-guess the Secretary of State or the President

of the United States as to whether or not we should enter into SALT II on the basis of whether or not we feel that the Soviets have fully complied or that they have partially complied and partially non-complied—with respect to SALT I.

I know there have been some persons who appear to have knowledge of this subject—former Secretary of Defense Laird, and Admiral Zumwalt, who charge that there have been aspects of noncompliance. But even they caution or condition their charges much more than you have, Mr. Chairman, on the basis that they involve an interpretation of the agreements. They interpret the agreements one way and maybe we would interpret them differently.

But I don't think we want to sit here and second-guess what the President or Secretary of State are doing on the basis of our interpretation of compliance or noncompliance.

Chairman PIKE. I am not suggesting that we second-guess them. I am suggesting that we have access to what they say. I would like to have access to what the Secretary of Defense says. I do not propose to second-guess him. I would like to know what he says.

Mr. McCLORY. Mr. Chairman, the reason I make the point is this: I think our charge and our responsibility is to determine whether or not intelligence is being accurately reported, or whether it is being distorted—whether it is being colored in order to arrive at a political decision. And that, I think, can be done by the staff examining the material they would like to examine, which I think should be made available to them to enable the staff and this committee to complete its investigation in this area.

Chairman PIKE. Well, when I supported your subpoena, Mr. McClory, I supported it with the thought that it meant what it said: That this committee—not Mr. Searle Field, but the Congressmen who constitute the Representatives of the American people—would get the information.

Mr. McCLORY. Mr. Chairman, I want the information. I don't necessarily want it in any particular form. I don't want to hold up for display or expose to the American people a document that is classified; but I do want the committee to get the information to carry on its investigation. It is the objective that I think we should seek—not the form.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman. First of all, I do not agree with Mr. McClory's contention here that only staff should examine these documents; and further I do not believe that we should in any way get involved with SALT II. But I agree with the Chair that a determination should be made as to whether or not an intelligence input has been thwarted by political considerations.

Now further, Mr. Chairman, I am bothered by this subpoena—

Chairman PIKE. I can only say that you are not half as bothered as a lot of other people are.

Mr. MILFORD. We may be a little bit wrong here, and that is why I wanted to air it out. I question whether or not we have any business getting into some of the subpoenaed material. For example, "All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission."

I think we should be able to get and see anything in the way of intelligence, and not have it screened, sanitized, or anything else. But why do we need "all documents from the Arms Control and Disarmament Agency's Standing Consultative Commission"? What bearing does that have on intelligence?

Mr. FIELD. They are a primary consumer of intelligence, if not the most important consumer, in this country today. They are one of the largest consumers of intelligence, according to our interviews with these people. Pretty much all of their input comes either from intelligence or meeting with the Russians in Geneva. All they do is handle intelligence, and they would be the primary point at which intelligence would either be sent back to be reevaluated or would go forward for purposes of a complaint.

Mr. MILFORD. Should we modify that subpoena by indicating intelligence input? That agency may have a truckload of documents.

Mr. FIELD. All documents furnished by them relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 would be based 100 percent on intelligence.

Mr. MILFORD. OK.

Mr. McCLORY. Would the gentleman yield?

Mr. MILFORD. Yes.

Mr. McCLORY. I would like to ask what we have received. We have received volumes of documents which contain the reports on monitoring with regard to SALT I.

Mr. FIELD. That is a good question, Mr. McClory. We sat down in the situation room at the White House yesterday morning with Colonel McFarland, and he handed us this stack of documents which—

Mr. McCLORY. What did you show me the day before yesterday?

Mr. FIELD. These are the same ones.

Mr. McCLORY. I see.

Mr. FIELD. Colonel McFarland maintained this is all that the National Security Council has relating to SALT compliance. Now, we know that there is a sub-group of the National Security Council called the Verification Panel. Their only job is to determine whether or not to verify that there have been violations of SALT I. They are continually doing this. They are reviewing complaints today. There is a substantial amount of information coming in to them from various agencies.

We received no documents from the Verification Panel. That is a little hard to believe. Colonel McFarland maintained there is absolutely nothing in their files except for this.

We confronted him with the Schlesinger letter. As the chairman said, the Secretary of Defense wrote a letter to the National Security Council demanding a meeting because of alleged violations. He got his meeting. There was that letter; there was a memo of the meeting, and obviously memos that came out of the meeting. We were told all of that material has been either destroyed or lost.

Mr. McCLORY. Would the gentleman yield further for this one point? Admiral Zumwalt might have had access to that other information; former Secretary of Defense Melvin Laird might have had access to that other information. We can get the testimony from them or other witnesses, if you don't get the information you are requesting from the White House; isn't that right?

Mr. FIELD. I think what we are looking at is not so much the information as it came in, but rather if and why it went back. We established through interviews yesterday that the Verification Panel has sent reports back to CIA for reevaluation.

Now, it is important to us to know why those reports went back and what the instructions were, and so forth. None of these documents—none of this information—were provided to us. I think the most disturbing thing was that we were told categorically that this small set of documents is all the National Security Council has that even relates to compliance with SALT I.

Mr. McCLORY. I want to say, Mr. Chairman, I don't propose to offer a motion on this on the grounds that I would hope—

Chairman PIKE. Mr. Milford, please continue. I don't think there is going to be any motion as to this. We will have a meeting. I announce to the members of the committee right now that we will have a meeting at 10 o'clock tomorrow morning for the purpose of discussing what action we will take on the subpoenas which have not been complied with.

Mr. TREEN. Do you intend for that to be an open meeting tomorrow morning? Will you start in open session?

Chairman PIKE. Yes; I don't see any reason why it shouldn't be an open meeting.

Mr. TREEN. At that time, Mr. Chairman, I would like to state for the information of the chairman and members, I intend to raise the issue of security within the committee and the staff; and this is prompted by another report from the London Observer carried in the Washington Post this morning. I think we need to address that issue. I will defer that until tomorrow, but I think it needs to be addressed at that time.

Chairman PIKE. The committee will now proceed to the hearing which we had scheduled for this morning on the Drug Enforcement Agency.

Mr. Milford?

Mr. MILFORD. I ask unanimous consent to address the committee for 1 minute out of order.

Chairman PIKE. Without objection.

Mr. MILFORD. Mr. Chairman, I spent the weekend studying the very comprehensive option papers and briefing materials that have been produced by our committee staff.

With absolutely no reservations, this is the best piece of staff work I have seen during my tenure in Congress. As far as I am concerned, Mr. Field and the rest of the staff have accomplished the impossible. While we have been spending our time in considerable detail on secrets, I do not think that I would be revealing one if I stated that this committee has a rather wide divergence of political philosophy within its membership. The staff did a commendable job in recognizing and verbalizing the intelligence problems that we are faced with in this committee. The indepth research of the various aspects of the problems are obvious in this report.

With absolutely no bias that I can detect, the staff papers clearly outline options that can reflect the basic philosophies of any member of this committee.

Furthermore, the very existence of such a written document, along with the Chair's repeated requests for individual committee members' recommendations, makes each of us a true partner in whatever product this committee turns out. It also makes each of us responsible for that product and mandates the needed compromise that would be necessary from such a politically divergent group. The excellent staff work should assist us in bridging that gap.

I would personally like to thank the chairman for his fairness in including all members in full participation in all activities of this committee.

Mr. Chairman, I would also like to commend Mr. Field and the staff for the very excellent work that is evident in the briefing materials that have been supplied to members. If any particular staff member or members were responsible for this work, I would ask Mr. Field to make their names known to all members of the committee.

Chairman PIKE. Mr. Field, I don't know whether you heard that, but that was a fine and, in my judgment, well-deserved accolade. If the other members of the committee haven't looked at this option book that has been sent around, I really suggest that you do so.

What Mr. Milford requested was that the names of the staff members who are responsible for preparing this compilation and analysis be made known to the members of the committee.

Mr. FIELD. Mr. Chairman, if I could comment, I think the compliments should go to Stanley Bach, Kathy Schroeder, and Jodie Scheiber, who have worked on this book. I think the compliments are properly directed to them. It is a fine job.

[Whereupon, at 10:10 a.m., the committee proceeded to its hearing on "The Drug Enforcement Administration's Domestic and International Intelligence Programs," which is printed in part 3.]

U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

FRIDAY, NOVEMBER 14, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m. in room 2118 Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Dellums, Murphy, Aspin, Milford, Lehman, McClory, Treen, Johnson and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; and Peter L. Hughes III, counsel.

Chairman PIKE. The committee will come to order.

Yesterday we discussed the fact that it seemed rather clear there had been noncompliance with three separate subpoenas. The first subpoena addressed itself to recommendations by the State Department for covert actions—recommendations by the State Department to the National Security Council for covert actions. As to this particular subpoena, the issue was raised that executive privilege has—am I wrong, Mr. Donner; you are shaking your head? Why don't you tell us what the status of that particular subpoena is?

Mr. DONNER. Executive privilege has not been raised, as of this date, with respect to any of them, sir.

Mr. FIELD. There is a letter on its way from the State Department that should explain it.

Mr. MCCLORY. If the chairman will yield to me.

Chairman PIKE. Certainly, Mr. McClory. Your pipeline is much better than my pipeline.

Mr. MCCLORY. My pipeline, which was in operation shortly before I came to this meeting, included conversations by telephone with Mr. Philip Buchen, counsel to the President, as well as with Mr. Jack Marsh.

I will refer primarily to Mr. Phil Buchen. He stated that the doctrine of executive privilege would be raised with regard to the subpoena directed to the Secretary of State for covert operation recommendations by the State Department.

I asked whether or not in each one of these instances, when a State Department recommendation for a covert operation was made, the President of the United States had personally made the decision to approve such a covert operation. He assured me that, in each instance, the President of the United States had personally made the decision.

Not this President, but a prior President—in all instances a prior President, and a prior administration.

I then stated that if the decision with respect to this was a personal communication with the President, it seemed to me that that was an instance in which executive privilege might be raised.

I further pointed out that I felt the doctrine of executive privilege applied to the Office and not to the individual who happens to occupy the Office of President at a particular time; so it would be appropriate, under my interpretation of the law, for this President to have the right to invoke executive privilege on behalf of——

Chairman PIKE. President Washington.

Mr. McCLORY. President Washington, any deceased President or any prior President of the United States.

In other words—the chairman is being facetious—it applies to the Office and not to the individual who occupies the Office, in my interpretation; so I do think that this raises serious questions——

Chairman PIKE. Mr. McClory, we have had testimony—and this was testimony from Mr. Kissinger—that the President, himself, has approved all of the covert operations since Mr. Kissinger has been in the Government and, according to his belief, prior to that time as well.

Would not your doctrine, then, prohibit Congress from looking at any covert operation because of executive privilege?

Mr. McCLORY. I am talking about communications with the President—recommendations made to the President, with decisions made by the President. It may be executive privilege could be expanded to include more than that which is being raised in this instance; but, calling your attention to the fact it is being raised here, and the circumstances under which it is being raised, I think executive privilege has direct application where the President himself acts.

Chairman PIKE. Does any other member on the Republican side wish to be heard on this subject?

Mr. TREEN?

Mr. TREEN. Is the staff going to give us a briefing on the question here, before we take action on a proposed resolution? We haven't a proposal before us now, but I assume one will be made.

Chairman PIKE. Let me just state that the staff will give us briefings on all of these issues to the extent wished by the members of the committee.

I thought that I had heard some views rather contrary to those just stated by Mr. McClory expressed over on the Republican side yesterday, and I thought perhaps they had gotten lost in transmission somewhere.

I will state this: In my judgment, the concept that the President can deny to Congress, under the doctrine of executive privilege, recommendations made to prior Presidents, ad infinitum, expands the doctrine of executive privilege to the point where it diminishes Congress to a barely visible object. I find that particular concept very difficult to accept.

I think there is a real area in which executive privilege applies, but I think it has been badly overstated this morning.

Mr. TREEN. The point of my question is to determine whether we will have a briefing on what the precedents are.

Chairman PIKE. Are you talking about the legal question at this point?

Mr. TREEN. Yes, sir. That is all my inquiry was directed to.

Chairman PIKE. Mr. Donner, can you enlighten us as to where, in your judgment, we are with regard to the legal precedents for denying information to Congress, and how those precedents apply to this situation?

Mr. DONNER. There is only one Supreme Court case that we could uncover which directly considered the question of executive privilege, and that is *United States v. Nixon*. The line of cases leading up to it seem to be the only cases directly concerned with executive privilege.

The area of executive privilege is a gray and ambiguous one. There is no way of defining exactly where it begins or ends. Judicial interpretation of it has been sparse. However, *United States v. Nixon* was a case in which a President in office sought to assert the privilege as to communications received by him while he was in office. The extension of the doctrine in this instance, apparently, would cover communications to a deceased President—President Johnson—and also, apparently, a living ex-President—President Nixon.

That does create a rather anomalous situation. If President Ford can assert the privilege for President Nixon, it would seem that, by inference, if President Nixon then wanted—just hypothetically—to reveal information to this committee or give this committee documents in his possession, he would be precluded from doing so by a President in office. I personally find this a difficult doctrine to accept.

I could find no judicial interpretation which even seems to discuss this question, let alone support it or deny it.

From our research, the assertion of this doctrine seems to be a novel proposition in all of its parameters.

Mr. TREEN. The *Nixon* case said the doctrine was not a universal doctrine; that it did not extend to all communications; that if there were evidence of criminal activity, that evidence would have to be examined, I think, in camera; and executive privilege could not be used to shield that sort of information. Is that the sum and substance of the Supreme Court decision?

Mr. DONNER. Yes. The Court addressed itself only to the limited area of where there is evidence for a pending criminal action.

Mr. TREEN. Did the Court in that decision, recognize that such a thing as executive privilege exists, in its dicta—

Mr. DONNER. There is strong inference in the dicta in that case—and again, this was an area which the Court did not define—that there is an area where executive privilege could properly be asserted.

Again, they were addressing themselves—even if you extend the dictum to its broadest extension—to a President in office, and to communications to him while he was in office.

Mr. TREEN. One other question then: In that case, did the Supreme Court reason, in suggesting that there is an area of executive privilege, that it was bottomed on the proposition that Presidents should be able to receive advice from their top aides in a perfectly confidential and candid manner? Isn't that the rationale for executive privilege?

Mr. DONNER. That is an aspect of it, yes, sir; and that was the suggestion of the dictum in that case, sir.

Mr. TREEN. I haven't decided how I am going to go on this issue. Most of these instances we are talking about today occurred in Democrat administrations, but it seems if the rationale of the Supreme Court decision is that we should preserve a channel of communication between a President and his top advisers, that channel could be destroyed if the exercise of the privilege is not extended to future Presidents; because the incentive of advisers to be candid would be destroyed to a certain extent if they felt that after the next election, or if the President died or something, all of thier candor was going to be exposed completely.

The whole area troubles me.

[The decision referred to—*United States v. Nixon*—appears at 418 U.S. 683 (1974).]

Mr. DONNER. There are two points I would like to make in connection with that.

First, the material required by this subpoena would be received not for release or publication, but as classified information. In other words, the publicity aspect is somewhat diminished.

Mr. TREEN. I hope you are right on your first point, sir.

Mr. DONNER. The second point—and this is again by interpretation rather than hard case law—is that it does not seem the Congress can decide the question of executive privilege on its own. It seems that is a judicial matter, and whether the privilege is validly exercised or not would be a question for the judiciary, not the legislative or executive branch.

Mr. McCLORY. Will the gentleman yield for a further question?

The doctrine of executive privilege has not been raised with regard to any of the other material that we have received. We have received a vast amount of material without having that doctrine raised before.

Mr. DONNER. To be technical, sir, we do not have the assertion of executive privilege even at this moment.

Chairman PIKE. It troubles me, Mr. McClory, that 3 days after the subpoena was returnable we have nothing. You have had phone calls; Mr. Donner and Mr. Field have had phone calls. The President has not asserted executive privilege. You have the assertion that he is going to assert executive privilege, but he hasn't done so.

Mr. McCLORY. I am relying on a conversation with the President's counsel that the President is asserting executive privilege with regard to those matters, and I am communicating that to the committee here this morning. I have no reason not to believe that.

Let me say further that we are certainly in a position here to recognize what the law is. And if we recognize that the law does authorize the President to assert executive privilege in this instance, we have a right not to try to enforce a subpoena—if that is the decision we choose to make. We don't have to claim ignorance of what the law is and say we have to submit this to a tribunal. I would prefer not to present this particular instance to a tribunal.

Mr. HAYES. May I ask Mr. Donner or Mr. Field this question: In the November 11 letter from General Scowcroft, the assertion is made in the first paragraph that all of the subpoenas have been complied with. This is simply a flat statement.

He says: in effect, "We hereby submit the documents described." He goes on in the rest of the body of the letter with a careful explanation of how he has complied with the subpoenas.

Have you had an opportunity since our last meeting—and an assertion that the subpoenas weren't complied with—to have a conversation with General Scowcroft or any of his staff about what they mean by "compliance" and what we mean by "compliance"?

[General Scowcroft's November 11, 1975, letter to Chairman Pike is printed on pp. 1498–1501 of the appendixes.]

Mr. FIELD. Mr. Hayes, I have personally talked with General Scowcroft since then. We have spent a great deal of time going back and forth on this. I would defer to the chairman as to how you want to take up these subpoenas—

Chairman PIKE. Essentially you are talking about different subpoenas: is that right?

Mr. FIELD. That is right. The subpoena we address now is to the Secretary of State and Mr. Hayes is talking about National Security Council subpoenas.

Mr. HAYES. These assertions of executive privilege don't go to any of the material that would have been supplied by General Scowcroft.

Mr. FIELD. That is right.

Mr. JOHNSON. I thought we discussed the parameters of the claim of executive privilege—if in fact they do claim executive privilege, and to which materials it will apply—yesterday. It doesn't concern the matter of classification, but relates only to recommendations by prior Secretaries of State to the 40 Committee, to the National Security Council, or to the President.

In some instances it goes to the President. In some instances it goes to the National Security Council.

Chairman PIKE. Mr. Johnson, I believe there are eight situations in which they said there were recommendations not only from prior Secretaries of State, but also from the present Secretary of State.

Mr. JOHNSON. I didn't understand that. I thought they were all from prior Secretaries of State.

I further thought some of them went to the President directly, and others went to the National Security Council and/or the 40 Committee first.

Chairman PIKE. Without having access to them, we really don't know where they went.

What we subpoenaed were State Department recommendations to the National Security Council. We did not subpoena any recommendations to the President.

Mr. JOHNSON. The doctrine of executive privilege applies because the National Security Council is an arm of the President and the President is the Chairman of the National Security Council.

We further established that the doctrine of executive privilege was not claimed by those Presidents to which the documents were directed, didn't we? President Johnson and President Kennedy—if they are the Presidents involved—did not observe the doctrine with regard to—

Chairman PIKE. I think we may have President Kennedy, we may have President Johnson, we may have President Nixon; but the only person who allegedly is going to assert the privilege is President Ford. In fairness to the other Presidents, I don't think anybody ever tried to get these documents.

Mr. JOHNSON. As a matter of fact, they were left in Government files and were not removed when these gentlemen left office.

Chairman PIKE. That is correct.

Mr. JOHNSON. They also were not private memoranda from the Secretaries involved or the President involved. They were State Department documents—not just little handwritten notes from one individual to another.

Chairman PIKE. Once again, not having seen them, we can't really say.

Mr. FIELD. It was our understanding—and perhaps the letter will clarify it—that three of them were direct communications to a President and five were not. I also believe the communications to President Nixon, which apparently are included among the documents, could not have been communications to him personally. All of his personal communications and records are now under court order, so we could not obtain them anyway. But in this case it has not been asserted that they are personal communications, and, in fact, they could not have culled the documents from those personal files because those files are under lock and key.

I think it is somewhat safe to say that at least the Nixon communications are not personal communications.

Mr. JOHNSON. I stated yesterday—and I don't feel the need to fully reiterate my position—that I think that would be the worst possible extension of the doctrine of executive privilege. It should be very narrowly defined. I don't even recognize that the Executive has the right to waive it. I don't want to acknowledge that this is something they could assert, but choose not to. I don't think we ought to even acknowledge that there is a possibility that a President can control everything in Government files and Government documents and that the President has absolute control over this information dating from the inception of the Republic.

Mr. KASTEN. Is there a motion before the committee?

Chairman PIKE. There is no motion before the committee, but simply a discussion and an attempt to inform the committee as to where we are and what our alternatives are.

Mr. KASTEN. In the interests of moving along, it seems the question of executive privilege is only being raised for the one group of documents which involves the Secretary of State, and the President, the 40 Committee and the 303 Committee. It seems the issue is much clearer as to the information we have been unable to receive from the 40 Committee, and also the information with regard to the SALT talks. Possibly we could proceed with those.

Chairman PIKE. I can only say that as you get into them, further ways will be found to fuzz up all of the issues. The issue as to the SALT talks has already been fuzzed up to some extent, and when we get to it, I will fill you in on that particular subpoena.

Mr. McCLORY. I don't think we should downgrade what we are doing by suggesting that issues are being fuzzed up. I think legitimate

arguments are being made here. For the committee to retain the full respect which I think the committee should have, we should recognize we are acting responsibly, deliberately, and legitimately and that these are responsible arguments which are being made on both sides. I certainly want to assure you that my arguments are. If I make arguments with regard to other issues, it is because I still want to carry out the objectives of this committee and get the maximum amount of information for the committee. It is not for any frivolous or any irresponsible reason that I would express an opinion differing from that of the majority of the members.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Mr. Chairman, we are talking now about the one issue of the subpoena directed to the Secretary of State. Perhaps you could tell us why we need this information, and what we are looking for in this document?

Chairman PIKE. The question has come up throughout our hearings, and in the operations of the Central Intelligence Agency generally, whether the CIA was—to use a phrase frequently bandied about—a “rogue elephant,” whether the CIA went off and did things on its own, or whether the CIA was in fact told to do things.

It has been our experience in those matters that we have gone into in some depth that in no instance did they go off and do things on their own. On the contrary, they were, from time to time, ordered to do things which they did not particularly want to do and, in fact, on occasion actively opposed.

The question then becomes—and Mr. Field stated this yesterday—whether those operations which are generated within the CIA, and in the normal course of business, are usually more responsible. Do they usually get our Nation into fewer difficulties than those which somebody outside of the intelligence operations department tells them to do?

So what we are trying to establish here is the nature of the operations that the CIA was told to do or that were generated in some other manner.

Most of the operations, I expect, are generated in the normal course of business, through normal CIA and DCI channels. Here we find a category of operations generated by the State Department. I think if the State Department is recommending operations to be carried out by the Central Intelligence Agency, it is part of our responsibility to see what kind of operations they are telling them to do or asking them to do.

Mr. ASPIN. On this one, we have received absolutely zero; is that correct?

Mr. FIELD. That is right.

Mr. ASPIN. Nothing has happened since yesterday on this one?

Mr. FIELD. That is correct.

Mr. ASPIN. Could the chairman tell us what our alternatives are regarding this subpoena?

Chairman PIKE. I won't give you all the alternatives, but I will tell you how I am going to vote.

The alternatives range from doing nothing to seeking to cite the Secretary of State in this instance for contempt of Congress. I am

going to vote in favor of citing the Secretary of State in contempt of Congress.

The one route we could take is to go back to the House for a resolution of necessity, but what has happened to that route is that time has kept running on us. I think by the time we went through that procedure, with two separate trips to the House of Representatives—let us assume the House had agreed to a resolution of necessity. We would then have to have some time frame within which the executive branch could comply with the House's assertion of the necessity for this information. If they then failed to comply, it would take some time to go the contempt route and I frankly think our charter would have expired before the issue were ever resolved. So I think at this point, that would be a meaningless exercise.

Mr. Lehman.

Mr. LEHMAN. I recall the quotation that those who do not learn from history are bound to make the same mistakes. I think this is one way that this country can learn from history.

I do not find in these subpoenas the same possible question of invasion of a person's privacy that we had in a previous subpoena.

We have had not only Dr. Kissinger as a kind of imperious Secretary of State; we have also had others, such as Secretary of State Dulles and Secretary of State Acheson, who seemed to be larger than life and dominated the administration. I am very concerned that if we are to have a good professional organization—my information is the CIA is a good professional organization—we must give it some form of buffer from the kind of orders, the kind of compulsive direction, it can sometimes get from the administration that it serves under. This is the kind of knowledge that I think it is imperative this committee seek from the history of the actions of this administration or the previous administration, in order to prevent these kinds of things from happening in the future, and to construct the safeguards our intelligence community needs in order to perform the duty which it was originally committed to perform.

I would be willing to support enforcement of this subpoena at this time and let the chips fall where they may.

Chairman PIKE. Mr. Dellums—

Mr. DELLUMS. Mr. Chairman, I would like to move the following resolution:

Resolved, That the Speaker of the House of Representatives certify the report of the Select Committee on Intelligence of the House of Representatives as to the contumacious conduct of Henry A. Kissinger, as Secretary of State, in failing and refusing to produce certain pertinent materials in compliance with a subpoena duces tecum of said Select Committee served upon Henry A. Kissinger, as Secretary of State, and as ordered by the Select Committee, together with all the facts in connection therewith, under the seal of the House of Representatives, to the U.S. Attorney for the District of Columbia, to the end that Henry A. Kissinger, as Secretary of State, may be proceeded against in the manner and form provided by law.

Chairman PIKE. Mr. Dellums, you are entitled to 5 minutes in support of your motion if you choose to use it.

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Chairman, we have been at this point once before. The majority of the committee by their vote several days ago decided not to challenge the Secretary of State with respect to certain information on the

ground that the scope of the particular item before us then was very narrowly defined.

I think that the matter before us is obvious. I think it is important. I think it establishes the principle of the need for Congress to have access to information and I think if this committee is to go forward with its important work, we desperately need to take a stand. At this point I offer this resolution as an effort on the part of this committee to take a stand with regard to certain information which will allow it to go forward with its investigation.

Mr. McCLODY. Mr. Chairman, I will oppose the resolution on the grounds previously mentioned, but I would also like to call the attention of the committee to the prior resolution they acted upon against the Director of the CIA, Mr. Colby.

It was based upon legal research of our counsel, and conformed to the requirement that we assert a necessity for the information. I think that our own counsel have advised us that this is a prerequisite to any kind of a proceeding to enforce a subpoena. If the committee wants to act in accordance with what I view as the procedure which is required to be followed for the purpose of truly enforcing a subpoena, I think the resolution of necessity is a prerequisite to any further action and, of course, it would have to be supported by action on the floor of the House.

I don't think it is a good idea for the committee to bypass any of the necessary preliminary steps in trying to get hastily at the business of going forward with a resolution to hold the Secretary of State in contempt of the Congress.

Chairman PIKE. Mr. McClory, I would like to say first, I presume when you offered the subpoena, you deemed the documents to be necessary to this committee. I think that the committee members by voting for the subpoena, made the determination that they believed the documents to be necessary for this committee, I don't think there is any other requirement—any other procedural requirement—than that this committee feels the documents are necessary, in order to take a contempt resolution to the floor of the House. The House may not support us. We always recognize that; but I don't think it is necessary to go through any intermediate steps.

Mr. McCLODY. Mr. Chairman, may I say that when the subpoena was offered originally, I was unaware of the fact that the President was going to assert executive privilege or that the documents covered by the subpoena involved personal action on the part of the President. In view of that assertion, I question our right to proceed. If there is a right to proceed, I think it does require this additional finding, at this time, on the part of the committee.

Mr. TREEN. Who has possession of the documents we seek at this time?

Mr. FIELD. The documents were sent from the State Department to the White House. They were then sent to the Justice Department, and I believe they are now back at the White House.

Mr. TREEN. Wait a minute. They were sent from the State Department to the White House and then to Justice?

Mr. FIELD. And then back to the White House.

Mr. TREEN. The documents are in possession of the White House, and not the Secretary of State, at this time?

Mr. FIELD. I believe that is correct.

Mr. TREEN. How does that affect our enforcement procedure?

Mr. FIELD. The papers at the White House are copies of the documents.

Mr. TREEN. Where are the originals?

Mr. FIELD. The originals would be with the Secretary of State.

Mr. TREEN. They are still there with him?

Mr. FIELD. That is correct.

Mr. DONNER. I would like to make an additional comment, Mr. Treen. I don't believe there is any way, under any basis of the law, that you can get rid of the papers and thereby avoid responsibility to respond to a subpoena.

Mr. KASTEN. Mr. Chairman, I would like to offer an amendment in the nature of a substitute.

Chairman PIKE. The gentleman will state his motion.

Mr. KASTEN. The resolution be amended to read as follows:

Resolved, that the House of Representatives considers the work of the Select Committee on Intelligence to be necessary to the investigation which the House is resolved to make concerning intelligence operations and considers noncompliance with the subpoenas, issued either before or after the adoption of this resolution by the Select Committee on Intelligence, to be a grave matter requiring appropriate enforcement.

That Henry A. Kissinger, Secretary of State, is directed to provide forthwith to the Select Committee on Intelligence of the House of Representatives the items specified in the schedule attached to and made part of the subpoena issued to Henry A. Kissinger, Secretary of State, under authority of the House of Representatives and dated November 6, 1975.

Chairman PIKE. The gentleman is recognized for 5 minutes in support of his amendment.

Mr. KASTEN. Thank you, Mr. Chairman.

I think it is important, especially in this particular case where we are dealing with—it is not hearsay, but at least insufficient information as to exactly what the position of the executive branch is going to be on this question. We have heard that a letter is on the way. None of us has it before us.

I think it is particularly important that we follow the correct procedure. The correct procedure is not contempt of Congress. The correct procedure is a resolution of necessity.

I think, also, Mr. Chairman and members of the committee, that in our effort to get the material, all of us agree we have a better chance of succeeding on the floor of the House and a better chance of eliciting the support of all of the Members—Republican and Democrat—in the House, through a resolution of necessity rather than through a contempt of Congress resolution.

I think that this is the proper procedure at this point. I think this is a resolution that we can win on. I think this is a resolution that addresses itself to the questions and the problems that we have. I would hope that we would adopt this resolution as a substitute for the contempt resolution, which I think is not the proper mechanism to deal with the problems with which the committee is faced at the present time.

Mr. McCLORY. Does your resolution contain the word "contumacious"? I notice the words "contumacious conduct" in the other resolution. It seems to me that is merely an offensive description, and cer-

tainly unnecessary in any resolution upon which the committee might act.

Does your resolution contain that expression?

Mr. KASTEN. This resolution does not contain that expression.

Chairman PIKE. The Chair will recognize the Chair for 5 minutes in opposition to the substitute.

I think that I would have gone along with this procedure 3 months ago, because I would tend to agree with the gentleman that we would probably have a better chance of passing his substitute resolution on the floor of the House since it is a gentler route than the other one.

I will simply say that I could not support it at this time, because, while we could probably pass it on the floor of the House, to do so would, as I indicated earlier, be essentially a meaningless gesture. We would pass it on the floor of the House and still not get the documents because we would run out of time before anything was ever done.

I, for one, am weary of the whole business of waiting and delaying and waiting and delaying to get information to which this Congress is entitled.

As to the word "contumacious," it is a word of art which means "contempt," and that is what we are talking about. It happens to be the particular word which was in the last contempt citation which came to the floor of Congress and it is the word which is used if you are going to have a contempt-of-Congress citation.

I would agree that it is a strong and abrasive word. But I don't think that you can proceed with a powder puff when you are dealing with contempt. That is what we are dealing with and, in my judgment, time has simply run out on the route which the gentleman is prepared to go.

I will be happy to recognize anybody else.

Mr. Johnson.

Mr. JOHNSON. Mr. Chairman, I want to have the different alternatives clear. If either resolution is adopted, action will have to be taken by the full House of Representatives.

Chairman PIKE. Action will have to be first taken by the Rules Committee, and in fairness to the members, I would like to make it very clear that this, itself, is not a foregone conclusion. The Rules Committee, as you know, is officially closed down for the year and it is going to take some action on my part and some support from the committee to get the Rules Committee to act. Then the full House will have to act on it.

Mr. JOHNSON. If the Kasten substitute resolution, which states that the Secretary of State is directed to provide to the select committee the items specified in the schedule, were adopted on the floor of the House, and the documents were still not forthcoming, then we would have to go back through the contempt route.

Chairman PIKE. We would have to go back through the contempt citation procedure—to the Rules Committee and then to the full House, and that is why we would just run out of time.

Mr. JOHNSON. With respect to the word "contumacious," is it correct that the rules of legal contempt and the word "contumacious" connected therewith do not refer to the act of despising someone or looking down on them, but is instead a legal term which means being in contempt of a lawful order?

Chairman PIKE. That is what I tried to indicate. It is a word of art which means contempt of Congress—legal contempt, not necessarily actual contempt.

Mr. JOHNSON. Now, I would like to direct a question to counsel. I am concerned that in the event this matter does come up under the Dellums resolution and the House does take action on it, the U.S. attorney would enforce the contempt citation. What defenses might be available to the Secretary, other than the doctrine of executive privilege? In other words, is it clear that we have followed all of the legal requirements? Have we directed the subpoena to the proper person; is what we are after clearly identifiable? There won't be any means for the court to avoid the issue as a result of our not having done our legal homework on procedure, will there be?

Mr. DONNER. I will always, Mr. Johnson, give credit to some clever lawyer someplace who might construct some argument. But as far as the preliminary procedural aspects for this committee go, they are to first of all authorize issuance of the subpoena. The subpoena itself demands production of fairly—in my opinion—identifiable documents and is specifically directed to a party who has not denied custody of these documents, and who has not indicated he did not have the documents to give to this committee.

To answer your question and develop it a little bit further, under the procedure, the contempt citation would then go to the U.S. attorney. There is a special statute—title 2, section 192—which authorizes the U.S. attorney to bring proceedings for contempt of Congress, or failure to obey congressional subpoenas. At this point, the U.S. attorney would present it to a grand jury.

Now, as to procedure, executive privilege could be raised at that time, either by motion or as a defense to an action. Presumptively, as I say, giving credit to imaginative attorneys, I am sure they would avail themselves of all the standard defenses to a subpoena.

Mr. JOHNSON. Given a situation where the original documents were not in the hands of the Secretary but were someplace else, and only the Secretary had copies, would that be a defense to the subpoena?

Mr. DONNER. No, sir. It may be urged by someone, but I would say that would be a rather fraudulent or facetious reply to a genuine request; and if someone has possession of the documents, the subpoena charges them with the duty to deliver that material.

Mr. JOHNSON. Mr. Chairman, under these circumstances, I intend to vote against the Kasten resolution and for the Dellums resolution.

Mr. TREEN. I would like to speak to the pending motion, Mr. Chairman.

In my view, this might have something to do with Mr. Johnson's question about the legal basis for and the soundness of our procedure here.

It goes to the fundamental question of whether the information we seek in this subpoena is information that is legitimately within the mandate or the authority of this committee. I voted "present" on the subpoena because I wasn't certain exactly what we were trying to get at.

The chairman said a moment ago that it is important for us to determine if the CIA was acting on its own. I agree with that 100 percent. The question we come down to now, it seems to me, is whether

or not this committee should see the recommendations of Secretaries of State from, I think, 1965 forward. That, to me, doesn't seem to have anything to do with intelligence gathering, the cost of it, the effectiveness of it, or the analysis of the intelligence gathered by the intelligence community.

It seems to me what we are now trying to get at is purely and simply the recommendations from whoever was Secretary of State during these 10 years to the President or to other persons. This is a fundamental problem that I had with the subpena, and that I now have with this procedure.

I would suggest that the legal argument could be made, and I expect it will be made, that the recommendations of the Secretary of State have nothing to do with our mandate as set forth in the House resolution creating us, House Resolution 591.

I think this is an important issue, and I am delighted to have it thrashed out; but again I will not be able to vote in favor of the pending resolution or the substitute because I think it goes beyond our mandate.

Chairman PIKE. The question is on the substitute offered by Mr. Kasten and the clerk will call the roll.

The CLERK. Mr. Giaimo.

Chairman PIKE. Mr. Giaimo votes no by proxy.

The Clerk. Mr. Stanton.

Chairman PIKE. Mr. Stanton votes no by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Chairman PIKE. Mr. Murphy votes no by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. No.

The CLERK. Mr. Hayes.

Chairman PIKE. Mr. Hayes votes no by proxy.

The CLERK. Mr. Lehman.

Mr. LEHMAN. No.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Present.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. No.

By a vote of two ayes, nine nays and one present, the substitute is not agreed to.

The question is on the resolution offered by Mr. Dellums and the clerk will call the roll.

The CLERK. Mr. Giaimo.

Chairman PIKE. Mr. Giaimo votes aye by proxy.

The CLERK. Mr. Stanton.

Chairman PIKE. Mr. Stanton votes aye by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. Mr. Murphy votes aye by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Hayes.

Chairman PIKE. Mr. Hayes votes aye by proxy.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. TREEN. No.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of 10 ayes and 2 nays, the resolution is agreed to.

Mr. Field, would you discuss the next subpoena as to which there is noncompliance? Before you go into the merits of the subpoena, would you address yourself to the issue of who is the proper person to whom the resolution would be addressed, in that there has been a change of personnel in the position of the Assistant to the President for National Security Affairs.

Mr. FIELD. Thank you very much, Mr. Chairman.

The subpoena would be subpoena No. 1, which we issued the other day. It is directed to the Assistant to the President for National Security Affairs, Dr. Henry A. Kissinger. We have been checking literally hour by hour to make sure that General Scowcroft has not yet been sworn in. He has not been. Pending further word, it is properly directed to Dr. Kissinger.

This subpoena called for all documents reflecting approvals of covert action projects by the 40 Committee or its predecessor committees since 1965. I would draw the committee's attention to the section in your briefing books on the 40 Committee subpoena. It contains a copy of the subpoena. It contains next a copy of your letter, Mr. Chairman, to the President on October 20, which preceded the issuing of the subpoena.

It then contains what I feel is a representative sample of the materials that had been provided to the committee as of that date. If the committee will bear with me a minute, I would like to review some specific documents which I think address themselves to the question of compliance.

The documents that you have before you are in reverse chronological order. They begin with 1974 and move back to 1965. I would like to begin with 1965.

The first document is from February 1965. As you can see, quite a large section of that document has been deleted. I feel this is somewhat representative of the kind of deletions that we have had in these documents. In particular, you will notice that items 1 and 2 on that document are completely missing. Items 1 and 2, from all indications of other documents, would in fact be covert action projects or programs.

I would move along to June 11, 1965. That is 10 or 15 documents further on. The only item that appears in that document is item 5. I think it is representative of situations where apparently large sections of the documents have been taken out; in other words, items 1 through 4 may well have been more than one page.

We will see better examples of this, I think, as we go along. The next document would be dated June 28, 1965. I believe it is on the very next page.

I think this is the best example of the kind of deletions that have been made. The items skip from item 1 to item 4. Items 2 and 3 are clearly cut out of the document. It then skips from item 4 to item 7. In other words, here is a document that could conceivably be two or three or four pages long. It gives you the feeling that you have gotten a reasonable amount of information, but in fact all somebody has done is to snip out little sections of the original documents, paste them together and compact them, and make the copy we received look like it is a complete document.

I would move then to January 23, 1970.

Chairman PIKE. Mr. Field, I do not think it is necessary for you to go through all the documents.

Mr. FIELD. Each of these does address a different aspect of our problem.

Chairman PIKE. I want to say at this point that this is what I meant earlier, Mr. Kasten, when I said that these issues are never all that clear cut. There are always relative degrees of fuzz. We have here documents which they will allege constitute compliance with our subpoena. But I think that as any of us look at what they have given us, we can simply make a pretty easy judgment that what they have given us is so heavily censored and excised as to be meaningless for our purposes. These documents really cannot be deemed to be in compliance with our subpoenas.

Mr. KASTEN. Mr. Chairman, I am in complete, 100 percent agreement with you on that statement. My difference is what the correct remedy is.

Chairman PIKE. I understand.

Mr. KASTEN. There is no question in my mind.

Chairman PIKE. I was not trying to indicate that there was any evil motivation. I am just saying that the issues are never that crisp and clear, and there are not going to be any black and white issues. There are always going to be relative degrees of confusion.

Mr. Aspin.

Mr. ASPIN. Mr. Chairman, again, if you could perhaps tell us briefly for the record what it is we are trying to get here and what is the point we are trying to establish or look into with this subpoena.

Chairman PIKE. Well, we are seeking here to look at the genesis of all of the covert operations; and more than that, to look at the degree of oversight, control, and responsibility for the launching of these operations.

You and I, and Mr. Dellums, and Mr. Treen, as members of the Armed Services Committee, for years heard the magic word, "the 40 Committee." It has seemed to us, as we get deeper and deeper into this, that the 40 Committee really has not had a prevalent role in the decisionmaking process or in the oversight process. The 40 Committee is always held forth as being that body which exercises "judi-

cial restraint" in authorizing these various operations. It has seemed to me and I think to most of the members of this committee that the role of the 40 Committee has been relatively negligible in authorizing these operations.

We are trying to get the information to see whether anybody ever really argues about these operations; to see whether anybody votes no on these operations; to see whether the 40 Committee is a reality or a rubber stamp.

Mr. ASPIN. We had some information as of yesterday on this—partial information. Did more information come in since our meeting yesterday on this subpoena?

Mr. FIELD. Mr. Aspin, I think the last document I was referring to gave us an example of what came in since yesterday. They added in the column the words "the Meeting" and "CIA," meaning it was a meeting and not telephonic vote, and that it was a CIA proposal.

That is already in the memo we have that is otherwise heavily deleted. It did not add any information. Someone made some handwritten notes in the columns. They only did it for a few years. That is all we have received in addition.

Mr. ASPIN. So basically, they have sent just a few pieces of paper and lots of deletions? Is that the situation?

Mr. FIELD. What you have in front of you is all that was received. All they did yesterday was add a few handwritten comments, which repeated information we already had. They did not add any information.

Chairman PIKE. Mr. Aspin, I do think you have raised a question which we ought to face up to right now—the weakness of our own position. That is, no matter how far we go in the contempt route, they can always purge themselves of contempt by providing "substantial compliance." What I suspect we are going to get is the dribble treatment.

We are going to get a piece of paper next week and another piece of paper the week after that, and they will say, "Now we are in substantial compliance." I think this exercise will probably go on until the day we reach the House floor—and it will go on after we reach the House floor.

Mr. ASPIN. There is a further problem in that I don't think we can identify all the documents we are talking about. So I don't think we know at any given point at what degree of compliance they are in. Do we have a very good idea in this case—and in the other case, the SALT case—of what there is and all that we are after?

Mr. FIELD. Mr. Aspin, in this case we have an excellent idea. What we are after is exactly what you have in front of you—these documents. There has never been any disagreement on that.

Mr. ASPIN. The SALT thing is more vague, but as far as this subpoena concerned, what we want is clear.

Mr. FIELD. We want these documents in their entirety. That is very simple.

Mr. JOHNSON. This is one time I emphatically disagree with the chairman's statement that this could be a fuzzy, gray area. I defy anybody to go down there and look at these papers and say there is even attempted compliance or partial compliance. To me, this is a

matter of pure black and white, because unless you can say delivering blank pieces of paper constitutes some form of fuzzying up the issues—I ask you to go through these quickly. Here are some examples; “The CIA paper on covert support was approved ———.”

Chairman PIKE. You can’t read that. It is stamped “secret.”

Mr. JOHNSON. I’m sorry if I disclosed a grave national secret. But I ask you to go through this as I did. Maybe I have just disclosed something I could be prosecuted for, but that is the character of all this stuff stamped “Secret, Eyes Only.” There is not any way you can make heads or tails out of anything we have received.

You cannot identify any of it. It is nonsense.

Mr. ASPIN. The gentleman is absolutely correct. There is no way in which you can say what we have constitutes substantial compliance. In the first case—the case of the resolution we just voted—there was not even an attempt at compliance. In this case, there is some feeble attempt, and I guess in the SALT case there is some information. But the question is the same question that the chairman asked: When is there substantial compliance and what is substantial compliance? I think that is the point we are operating against. I think there is widespread agreement among all the members of this committee that there is clearly not compliance at this point.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Mr. Chairman, I would like to offer the following resolution:

Resolved, That the Speaker of the House of Representatives certify the report of the Select Committee on Intelligence of the House of Representatives as to the contumacious conduct of Henry A. Kissinger, as Assistant to the President for National Security Affairs, in failing and refusing to produce certain materials in compliance with a subpoena duces tecum of said Select Committee, described in said subpoena as all 40 Committee and predecessor committee records of decisions taken since January 20, 1965, reflecting approvals of covert action projects, which subpoena was served upon the Assistant to the President for National Security Affairs, who was then and there Henry A. Kissinger, and as ordered by the Select Committee, together with all the facts in connection therewith, under the seal of the House of Representatives, to the U.S. Attorney for the District of Columbia, to the end that the said Henry A. Kissinger, as Assistant to the President for National Security Affairs, may be proceeded against in the manner and form provided by law.

Chairman PIKE. Mr. Dellums, you are entitled to 5 minutes. I think we all understand the issue.

Mr. DELLUMS. I yield back the balance of my time.

Chairman PIKE. Mr. Kasten, did you wish to offer a substitute?

Mr. KASTEN. Mr. Chairman, I would like to offer this amendment in the nature of a substitute:

Resolved, That the House of Representatives considers the work of the Select Committee on Intelligence to be necessary to the investigation which the House is resolved to make concerning intelligence operations and considers noncompliance with the subpoenas, issued either before or after the adoption of this resolution by the Select Committee on Intelligence, to be a grave matter requiring appropriate enforcement.

Sec. 2. That Henry A. Kissinger, Secretary of State, is directed to provide forthwith to the Select Committee on Intelligence of the House of Representatives the items specified in the schedule attached to and made part of the subpoena issued to Henry A. Kissinger, as Assistant to the President for National Security Affairs, under authority of the House of Representatives and dated November 6, 1975.

To wit, all 40 committee and predecessor committee records of decisions taken since January 20, 1965, reflecting approvals of covert action projects.

Mr. Chairman, the reasons for this amendment are similar to the reasons that I previously gave for my other substitute resolution.

I yield back the balance of my time.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I think the information we are seeking is vital and necessary to the work of this committee. I don't think we need to have every bit of secret information involved in these; but to be given material which is so meaningless because of deletions hampers the work of the committee. I still feel that we can get additional information. I'm going to support Mr. Kasten's substitute in the hope that that will have the effect of producing the additional information.

It is the information we require, not the precise document, not every last detail; but we have to know how this intelligence community operates, whether it is operating according to a pattern, and whether it is operating in a slipshod or ad hoc way.

We cannot come up with a responsible recommendation unless we have the information.

Mr. KASTEN. Would you yield?

Mr. McCLORY. I will be happy to yield.

Mr. KASTEN. I want to disagree with the gentleman from Illinois. In no way do I intend my resolution to ask for or request any lesser degree of compliance or of information or of cooperation. It is my strong feeling that we should have the information that we are asking for; that we should have compliance with the subpoenas that we have issued. My objection to the contempt resolution is not that they can give us less information. My objection is only that I feel that the contempt citation or the contempt resolution is inappropriate at this time. But in no way do I feel that we should have less information available to our committee for the important work of our committee.

Mr. McCLORY. Let me say that I'm sure the gentleman does not suggest that we should identify sources or that we should get into the business of techniques that may be employed, any exchanges with other countries, diplomatic exchanges, or things of that nature.

I would just condition my statement on the fact that I think there are exceptions. It is the information we want. It is not the precise form. It is not just because it is secret that we want it; it is because it involves the manner in which the community operates that we require this.

Mr. JOHNSON. Would the gentleman yield?

Mr. McCLORY. Yes.

Mr. JOHNSON. Would you agree with me, Mr. McClory, that the subpoena which you offered, in which you requested all 40 Committee and predecessor committee records of decisions, has not been complied with in any fashion?

Mr. McCLORY. The documents I am looking at do not mean very much to me. I think we need substantial additional information.

Chairman PIKE. Mr. Aspin?

Mr. ASPIN. It is tough to vote against these Kasten substitute resolutions. I think almost all of what he says is correct. His political judgment about what it is possible to do, I think, is absolutely right. The only problem that I have with him is the timing.

The Rules Committee is closed down for the year. They say they just cannot give rules to anybody else because they are so backed up that anything else would not get to the floor.

What we are up against is the fact that we have to file our report by the end of January. That means that if we have to go through this procedure twice, it is not going to happen. I have a feeling that if we pass only a resolution of necessity, the other side will know that we cannot go through the whole procedure again.

I am sure Mr. Kasten is right in saying we will have more votes for a resolution of necessity than we will for a contempt resolution, but even if we get more votes they know we have a time deadline and cannot go through the cycle again. It is too bad, because I think his substitute resolution is the right way to go—but the circumstances are not right.

Chairman PIKE. If an issue like this had been raised several months ago, I would have attempted to go the route of a resolution of necessity rather than this.

Mr. Treen?

Mr. TREEN. I would like to ask a couple of questions of counsel.

Does the administration say this is the extent of what we are going to get? Are there present efforts to furnish additional information or to work out a basis for supplying more information, or what?

Chairman PIKE. I would like to respond to that. It has been indicated to me that I would be permitted to go down and look at these documents. That is not satisfactory to me. We subpoenaed these documents for the committee. One of the difficulties which my predecessor had was that he was in possession of information which the rest of the committee did not have. This chairman has made it clear from the outset that when we subpoena documents for the committee, and when there is information which the committee feels it is essential that it have, I am not going to look at the documents and deprive the rest of the committee of seeing the material themselves.

Mr. TREEN. Mr. Chairman, I don't quarrel with you on that point at all. I would not want to get myself in that position if I were chairman, either. My question is really directed to whether or not efforts are being made now and whether there are any suggestions from the administration that more information would be forthcoming—or is this it?

Is this the extent of it?

First of all, have the respondents to the subpoena said "This is it; this is all you are going to get"?

Mr. FIELD. Mr. Treen, we are continually talking. There is all sorts of talk going around, but there has been no physical evidence—no hard evidence—turned over; nor has there been any change in the type of information that we have received all this week.

Mr. TREEN. Do I understand that you worked on this with representatives of the respondents over the weekend and have been working on it pretty much full time?

Mr. FIELD. That is correct.

Mr. TREEN. Have they indicated that you are not going to get any more?

Mr. FIELD. We have tried repeatedly to get even small bits more—even characterizations of events.

Mr. TREEN. Have they said, "This is it; you are not going to get any more"? Have they told you that yet?

Mr. FIELD. They keep asking if we cannot work things out but——

Mr. TREEN. I just wanted to know.

Chairman PIKE. Mr. Treen, they always indicate that they are going to be fully cooperative. They always indicate that they are going to cooperate to the hilt. But this was a subpoena, and it was returnable last Tuesday, and this is what we got.

Mr. TREEN. I understand that. There were five subpoenas for a great deal of information. I am trying to find out if they are having the pragmatic problem of getting the information together—of working things out with you. Or are the respondents advancing any notions that the committee should not have the information because of its extra special sensitivity or things of that sort? I am trying to find out if there is a practical problem with compliance.

Mr. FIELD. First of all, there is not a practical problem. This set of documents has existed in entirety since we began. Both of us knew about them. There was no problem of pulling them out of files or anything.

The problem has been how much. In our private conversations, it has gotten down to the point that they just don't want to give us that information. In a nonlegal sense, that is what it gets down to.

Mr. TREEN. Have they advanced any suggestions or notions that extra sensitive matters would be revealed to this committee as a reason for not wanting to furnish more information?

Mr. FIELD. Not in any specific case. We are already in possession of similar documents in this series which are probably as sensitive as any that are in this category. So there is no specific case in which they would say a document is just too sensitive. It is merely the bulk of materials that they do not want to turn over to the committees.

Mr. TREEN. A parliamentary inquiry, Mr. Chairman: Would a motion be in order now, or after the pending resolution is voted on, to call the respondent or representatives of the respondent to testify as to the alleged noncompliance? When would that be in order? I have no notion that it would succeed, but when would such a notion be in order?

Chairman PIKE. Since we are probably all agreed that it is not going to succeed, I think it would be in order at any time.

Mr. TREEN. I make the motion at this time as a substitute for the pending resolution.

Chairman PIKE. The pending resolution is Mr. Kasten's resolution.

Mr. TREEN. Right, that one, and the basic resolution; I move that action be deferred on the resolution and the substitute resolution until an opportunity has been afforded, within the next 2 working days, for the respondent of the subpoena to explain the reasons for the alleged noncompliance.

Chairman PIKE. All those in favor of the motion made by the gentleman from Louisiana, signify by saying aye.

[Chorus of ayes.]

Chairman PIKE. Contrary, no.

[Chorus of noes.]

Chairman PIKE. The noes appear to have it. The motion is not agreed to. The question is on the resolution in the nature of a sub-

stitute offered by Mr. Kasten. Those in favor of the resolution signify by saying aye.

[Chorus of ayes.]

Chairman PIKE. Contrary, no.

[Chorus of noes.]

Chairman PIKE. The noes appear to have it.

The substitute is not agreed to.

The question is on the resolution offered by the gentleman from California, Mr. Dellums. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Chairman PIKE. Mr. Giaimo votes aye by proxy.

The CLERK. Mr. Stanton.

Chairman PIKE. Mr. Stanton votes aye by proxy.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. Mr. Murphy votes aye by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Chairman PIKE. Mr. Lehman votes aye by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. No.

The CLERK. Mr. Treen.

Mr. TREEN. No.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Chairman.

Chairman PIKE. Aye.

By a vote of 10 ayes and 2 nays, the resolution is agreed to.

Mr. McClory.

Mr. McCLORY. Mr. Chairman, I ask leave to read into the record at this point a short letter from George H. Aldrich, Acting Legal Adviser to the Department of State.

Chairman PIKE. Is this the letter which I just saw Mr. Leppert come up to the committee table and deliver to Mr. Donner and then walk out that door and come back in that door over there?

Mr. McCLORY. It may well be.

DEAR MR. CHAIRMAN: The Secretary of State has been instructed by the President respectfully to decline compliance with your subpoena to the Secretary of November 6, 1975, for the reason that it would be contrary to the public interest and incompatible with the sound functioning of the executive branch to produce the documents requested.

The subpoena sought "all documents relating to State Department recommending covert action made to the National Security Council and the 40 Committee and its predecessor committees from January 20, 1961, to present." The committee staff has made clear that this is intended to cover recommendations originating with the State Department. An examination of our records has disclosed 10 such documents, dating from the period 1962 through 1972. These consist of recommendations from officials in the State Department, sometimes the Secretary of State, to the 40 Committee or its predecessor, 303 Committee, or to

the President himself in connection with consideration by one of those committees.

The documents in question, in addition to disclosing highly sensitive military and foreign affairs assessments and evaluations, disclose the consultation process involving advice and recommendations of advisers to former Presidents, made to them directly or to committees composed of their closest aides and counselors.

Therefore, I advise you that the Secretary of State is declining to comply with such subpoena on the basis of the President's assertion of Executive privilege.

Sincerely,

GEORGE H. ALDRICH,
*Acting Legal Adviser
to the Department of State.*

Mr. Chairman, I ask permission to have this inserted in the record.
Chairman PIKE. It has just been inserted in the record.

[The November 14, 1975, letter from Mr. Aldrich is printed on pp. 1502-1503 of the appendixes.]

Mr. PIKE. Mr. Field, would you proceed with the next item, which is noncompliance with the subpoena for the SALT documents?

Mr. FIELD. Thank you, Mr. Chairman. This is subpoena No. 5, which was issued on November 11. It is the subpoena the committee refers to as the SALT subpoena. It is addressed to the Assistant to the President for National Security Affairs, who again is Dr. Kissinger. Now as of yesterday, Mr. Chairman, the committee had been provided with a set of pamphlets, which I showed to the committee yesterday. It is about an inch and a half thick. We had been told repeatedly that that was all the National Security Council had in its possession relating to SALT I compliance. It turns out that upon reviewing their files, that was not all that the National Security Council had. So last night the White House delivered to the committee additional materials. If you will refer to your briefing books, you will see a good portion of the materials in your book.

What you will see in your book are primarily either newspaper articles or CIA analyses of newspaper articles. The first is an analysis of an Aviation Week article. The next, I believe, is a reprint.

Chairman PIKE. Mr. Field, I would suggest to you that you are now reading from top secret documents. I think you must be very careful.

Mr. FIELD. I am just checking, Mr. Chairman, to see if the actual articles are stamped top secret. The article by Tad Szulc is not stamped top secret. We already have a copy of that. There is an analysis of that article by the CIA. That is a substantial portion of the materials which were provided last night. The rest of them are here. I have about another half inch of materials.

This morning, we interviewed under oath Maj. Daniel Christman, who is a staff member of the National Security Council. He is the principal National Security Council staff officer in charge of SALT compliance.

We asked him to identify the types of materials which he would have in his files at the National Security Council with respect to SALT compliance. He described a Soviet compliance file which he said was some 2 feet thick. Of that, perhaps a quarter inch to a half inch of materials have been provided to this committee. The remaining materials in that file apparently are primarily records of the Standing Consultative Commission, which is the Commission that meets in Geneva to register complaints with the Soviets. There are memos and documents related to that.

We specifically subpoenaed those materials as they were provided to the National Security Council. Those records, some 12 or 18 inches of them, were, in fact, provided to the National Security Council by the Standing Consultative Commission. In addition, Major Christman testified that there are letters and memos from Director Colby and Deputy Secretary of Defense Clements to the National Security Council on SALT compliance that have not been provided to this committee, and that there are also written briefings by the DCI that have been given to the National Security Council and the Verification Panel that have not been provided to this committee.

I might point out that, among other things, there is a U.S. Intelligence Board white paper on SALT compliance in 1975 that has been used to brief Congress, but it was not provided to this committee pursuant to our subpoena. Our subpoena did cover intelligence community materials provided to the National Security Council. The USIB is a member of the intelligence community staff and therefore this white paper would fall directly within the subpoena.

There are option papers from the intelligence agencies containing SALT compliance analyses that have not been provided to this committee. There are intelligence dailies and digests containing SALT compliance information which are in the possession of the National Security Council and have not been provided to this committee, which would fall within the purview of our subpoena. In addition, there is the Verification Panel under the National Security Council, whose sole responsibility is to verify possible violations coming from the intelligence community's monitoring groups.

There is a Restricted Working Group which is a subgroup of the Verification Panel. Memos relating to Verification Panel meetings, some of which come from the intelligence community in preparation for those meetings; the meeting memos themselves; the minutes of those meetings; any decision memos coming out of them—none of these materials have been provided to this committee. The memos circulated by the Restricted Working Group, of which the CIA, DIA, NSA, and the State Department are all members, and therefore memos coming from various members of the intelligence community to the National Security Council, which is where the Restricted Working Group resides, have not been provided this committee. There has not been one single piece of paper from either the Restricted Working Group or the Verification Panel which has been provided to this committee.

Based upon that information, as well as information we received from the source agencies—the CIA particularly—on such matters as National Security Council complaints which have been forwarded to the monitoring groups in the intelligence community and on which there has been correspondence back and forth—none of which we have seen—I would say that there is a substantial amount of information in the National Security Council files that has not been provided to this committee pursuant to our subpoena.

Chairman PIKE. Mr. Kasten?

Mr. KASTEN. Why has that information not been provided to our committee?

Mr. FIELD. This morning when we were interviewing Major Christman, he began to bring up the question of, "Well, of course, the Na-

tional Security Council is adviser to the President," et cetera. We began to ask him, "Are you therefore implying that executive privilege applies?" The transcript will be available shortly. But I cut it off because I did not feel it was up to us to get into a discussion with Major Christman, who is not an attorney, as to whether executive privilege was being asserted. That is the only discussion I have ever had.

It is hard to have a discussion with anybody else about the material because they fairly consistently maintain there are no other files relating to compliance.

Mr. KASTEN. Up until this morning, hadn't we been told there were no files such as you are describing to us? Haven't we been told by representatives of the National Security Council that these files do not exist?

Mr. FIELD. We had been told that categorically. Two days ago, Colonel McFarland maintained very specifically that the initial documents we received were all that the National Security Council had with respect to compliance. We now see additional materials, including some analyses of newspaper articles which do pertain to compliance and which were in their possession and which were not provided. So we are now at the point where we know that additional materials do exist.

Mr. KASTEN. Is there any question in your mind that the materials that were described by the person you interviewed this morning are in the possession of the National Security Council? Are you sure that they are there and our subpoena is in the correct form? It is possible that the materials he is describing are in existence, but are not available at the National Security Council?

Mr. FIELD. Mr. Kasten, Major Christman was describing to us the materials that are in his files at the National Security Council. He is one of, let's say, seven people who are working on this.

Mr. KASTEN. Thank you, Mr. Chairman.

Chairman PIKE. Is there any further discussion? Mr. Dellums?

Mr. DELLUMS. Mr. Chairman, I would like to move the following resolution:

Resolved, That the Speaker of the House of Representatives certify the report of the Select Committee on Intelligence of the House of Representatives as to the contumacious conduct of Henry A. Kissinger, as Assistant to the President for National Security Affairs, in failing and refusing to produce certain pertinent materials in compliance with a subpoena duces tecum of said Select Committee; described in said subpoena as all documents furnished to the National Security Council as relating to adherence to the provisions of the Strategic Arms Limitation Agreement of 1972 and the Vladivostok Agreement of 1974; which subpoena was served upon the Assistant to the President for National Security Affairs, who was then and there Henry A. Kissinger, and as ordered by the Select Committee, together with all the facts in connection therewith, under the seal of the House of Representatives, to the U.S. Attorney for the District of Columbia, to the end that the said Henry A. Kissinger, as Assistant to the President for National Security Affairs, may be proceeded against in the manner and form provided by law.

Chairman PIKE. Mr. Kasten?

Mr. KASTEN. Mr. Chairman, I had intended to offer a resolution in the nature of a substitute at this time. But based on the information that was provided by our staff as well as information that I personally have been made aware of over the past 3 or 4 days, and based on consultation with the representatives of the administration and National

Security Council, I think my resolution of necessity would not be appropriate, and I would support the resolution of the gentleman from California.

Chairman PIKE. Mr. Treen?

Mr. TREEN. First of all, I want to ask a question of counsel, and perhaps the chairman can also enlighten me on this: I have raised this question from the time we took up the subpoena. The area of SALT compliance is one which we all recognize to be an extremely important matter. Certainly I do, as a member of the Armed Services Committee. I think this is a most fundamental question that could be of greater importance than any issue we have been into yet. What are we trying to get into here?

Are we trying to get at the quality of our intelligence gathering with respect to verification?

Are we trying to get at the question of whether or not this intelligence gets to our top policymakers?

Are we trying to get at the basic question of what our top policymakers ought to be doing in this area? All of these are interesting questions. But what are we trying to get at here now?

Mr. FIELD. To be as specific as possible, I think we are trying to determine whether or not the predispositions of policymakers may in some fashion influence intelligence.

Mr. TREEN. In other words, whether intelligence is arranged or distorted to fit what the policymakers want? Is that right?

Mr. FIELD. That is correct.

Mr. TREEN. Do we have any indication that any of this information with regard to SALT compliance is not reaching the President of the United States—either this President or the previous President?

Mr. FIELD. Those are pretty dangerous questions to ask. If I said we had such an indication, I might be giving too much credence to a small piece of information. In light of the general interest in the subject, I would rather discuss it personally with you if you would like to go over what we have been told and what we are looking at.

Mr. TREEN. I can understand the sensitivity of the whole matter. Again, the mandate of this committee is to determine whether we are getting our money's worth from our intelligence, whether the intelligence apparatus is working properly, and whether this intelligence is getting to our top policymakers. I am vitally interested in that question. In fact, I would hope that we could perhaps have a committee of Congress, if we run out of time, to investigate just that question—whether or not there is SALT compliance. That is extremely important. Again, I wonder a little bit whether it is within our mandate if what we are trying to get at is the question of what the President may be deciding on the basis of that intelligence. That is not within our purview.

Chairman PIKE. Mr. Treen, if you would yield, I think this is legitimate area of inquiry. Our mandate would cover not only the question of whether the intelligence is being slanted and whether objective intelligence is getting to the President alone, but also whether it is getting to Congress.

Mr. TREEN. Well, I agree with you because I think we need to have some oversight on SALT compliance in this Congress.

Let me ask one other question, Mr. Chairman: Do the respondents to this subpoena indicate that they are having a pragmatic problem of time? Is there any other reason why they are unable to gather the information we have requested, or do you believe we have now gotten all we are going to get?

Mr. FIELD. They seem to be having a lot of problems, but we have no indication as of right now that there is any additional information coming to us.

Mr. TREEN. Pragmatic problems as well as the question of whether they want to give us the information; would you say both apply?

Mr. FIELD. First, they don't seem to be able to locate their files which seems somewhat incredible. Second, we are asked to believe that they just don't keep records of major events in their own bailiwick.

Mr. TREEN. Mr. Chairman, I don't care whom this may ultimately embarrass, but I think we ought to have a record of the efforts to comply with this subpoena. If they don't know where records are—if that is true—I would agree that is incredible. I think perhaps we ought to assemble a record before we go to the floor with this particular resolution. Therefore, I would offer a motion, if the Chair will entertain it at this time, to defer action for 2 working days on the pending resolution until we have the opportunity to question the respondents, or the representatives of the respondents, with regard to compliance with the subpoena.

Chairman PIKE. I would like to speak in opposition to your motion for this reason: I think we have a pretty good record. Mr. Field has stated that he and Mr. Donner went down to the White House and were told that there were no documents other than the U.S. Intelligence Board summaries which had already been provided to this committee.

Mr. TREEN. Would you yield?

Chairman PIKE. Certainly.

Mr. TREEN. Did they say the documents are not in existence or they didn't have them?

Chairman PIKE. They said there were none. It was rather obvious to both Mr. Field and Mr. Donner that this was an incredible statement; and being incredible, they therefore did not believe it. The fact of the matter is that Mr. Donner and Mr. Field were correct. They had not been told the truth.

The White House has now miraculously found some documents and we have been given a handful of them. They are very sensitive documents. There is no question about it. They are tremendously sensitive documents. But it is a tremendously important issue. I think that Congress, as the consumer of intelligence responsible for raising and supporting armies and providing and maintaining a Navy, has a right to these documents, equal to that of the President.

Mr. TREEN. I agree with you on that point.

Chairman PIKE. I don't think we need to take any additional time to demonstrate that, as to this issue, they have simply not told the truth. They have, in effect, admitted that they did not tell the truth. It is not fair to say "they." One man did not tell the truth, but he was the man who was given the responsibility of cooperating with this committee.

Mr. TREEN. Would the chairman yield?

Chairman PIKE. Certainly.

Mr. TREEN. That is exactly the point. We say "a man." We don't know what his authority was.

Chairman PIKE. Colonel McFarland.

Mr. TREEN. We don't know what his authority and responsibility were.

Chairman PIKE. We know that.

Mr. TREEN. But when we go to the floor and this comes up for argument, we are going to be talking about what someone told us. Sometimes it will be hearsay in the first instance and sometimes hearsay in the second instance. It would seem to me that no matter on which side we end up on this issue—and you may find me right with you on this one, Mr. Chairman—it makes sense to have the record of what these witnesses, including the respondent himself, did to comply with, why they have not complied, and their explanations for the alleged misstatements to the staff of this committee. All of that ought to be in the record. Otherwise, I don't think you can really point to it officially when you go to the Rules Committee or when you go to the floor.

Chairman PIKE. Mr. Hayes?

Mr. HAYES. I would respectfully submit that it is not our burden to show cause as to why the subpoenas have not been complied with. That is the burden of those to whom the subpoenas were directed.

Mr. TREEN. Would the gentleman yield on that point?

Mr. HAYES. Yes.

Mr. TREEN. That is exactly the purpose of my motion, Mr. Hayes—to have someone come here and put on the record why there has not been compliance, so we will have that for the entire Congress.

Mr. HAYES. But the problem with that, Mr. Treen, is that it is beyond the scope of any kind of procedure that I am familiar with for seeking out information. We probably have the discretion to ignore our own subpoenas, which is one of the options described by the chairman. But we get ourselves into just exactly that fix—ignoring our own subpoena and using our discretion to say we really didn't mean it at all. In the past, I have supported resolutions here to accept as a form of compliance some rather shaky bits of compliance. It is not that I feel I have gone completely out of my way to do that and exercise what I think is the extreme limit of the discretion of the committee and the extreme limit of my own discretion as a member of the committee in casting that vote. But we are in the position today of saying that we should make a record, and that we should go down and instruct those persons to whom the subpoenas were directed on how to do that. I think the best course of action for this committee or any committee of Congress to take is to direct our subpoenas and make them as specific as possible—I was one who was flashing the whip-handle to get those subpoenas as specific as possible—and then be willing and ready to enforce them.

I think the executive is perfectly capable. They have a good budget and a lot of talent down there. Surely those distinguished gentlemen to whom we have directed these subpoenas can in fact get the kind of help they need to show cause as to why they could not comply.

Mr. TREEN. If you will yield, you touched upon the problem when you said "show cause." This is not a judicial procedure. In a judicial proceeding, there would be an opportunity for the respondents to show cause why they had not responded to a subpoena. The basis of that

is pure logic; the judge must have the opportunity on the record, with testimony under oath, to determine why there has not been compliance. Although we are not required to do that—I agree 100 percent that we are not so required—it seems to me that the underlying principle of the judicial process with respect to the enforcement of subpoenas should apply here in order to give the judge, which in this case will be the House of Representatives, the opportunity to see what the respondent says.

Chairman PIKE. Mr. Treen, obviously, if you look at the language of the resolutions which Mr. Dellums has offered, what we are asking is that a report be certified. There must be a report, and there will be a report. And I hope the last item of business today will be committee authorization of the filing of such a report and that the reports will in fact be filed. I believe that they will be adequately specific as to what has happened.

The question is on the motion of the gentleman from Louisiana, Mr. Treen. All those in favor of the motion signify by saying aye.

[Chorus of ayes.]

Chairman PIKE. Contrary, no.

[Chorus of noes.]

Chairman PIKE. The noes appear to have it. The motion is not agreed to.

The question is on the resolution offered by the gentleman from California, Mr. Dellums. The clerk will call the roll.

The CLERK. Mr. Giaimo?

Chairman PIKE. Mr. Giaimo votes aye by proxy.

The CLERK. Mr. Stanton?

Chairman PIKE. Mr. Stanton votes aye by proxy.

The CLERK. Mr. Dellums?

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy?

Chairman PIKE. Mr. Murphy votes aye by proxy.

The CLERK. Mr. Aspin?

Mr. ASPIN. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Chairman PIKE. Mr. Lehman votes aye by proxy.

The CLERK. Mr. McClory?

Mr. MCCLORY. No.

The CLERK. Mr. Treen?

Mr. TREEN. Present.

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Chairman?

Chairman PIKE. Aye.

By a vote of 10 yeas and 1 nay and 1 present the resolution is agreed to. I request that the staff be instructed to write the report and that the chairman be requested to go to the Rules Committee and ask for a rule on this.

Mr. ASPIN. Will we have an opportunity to see the report?

Chairman PIKE. You will have all the opportunity you wish to look at the report. I had not planned additional meetings for the purpose of approving the report. The report will be done in the normal course of business. There will be the usual opportunity for minority views, if the minority wants to write minority views.

Mr. ASPIN. Could you give us assurances that we can read it before it is in final form?

Mr. FIELD. Mr. Chairman, I think our rules require 5 calendar days, excluding Saturdays and Sundays; so we will be working toward next Friday.

Mr. TREEN. Is that from today?

Chairman PIKE. From right now.

Mr. TREEN. First of all, I do want to serve notice that I want to file minority views. Second, will we have 5 days from the time the report is put together?

Chairman PIKE. No.

Mr. ASPIN. Today is not within the 5 days?

Chairman PIKE. Today is not within the 5 days. Let me correct that. Either today is not, or the day on the other end is not. There are 5 days, just the way you count 5 days on a calendar.

Mr. JOHNSON. Isn't there a 24-hour time limit for minority views to be prepared after the majority report is prepared? There is an additional time period.

Chairman PIKE. I can only state in all humility that I am not precisely sure what the rights of the minority are. But I can assure you that they will be obeyed and protected.

Mr. JOHNSON. We are operating under the House rules.

Chairman PIKE. Yes; we are and we will continue to do so.

Mr. TREEN. Mr. Chairman, is that 5 legislative days?

Mr. FIELD. Five calendar days, excluding Saturdays and Sundays, from the time the committee gives notice to file a report—which would be a few minutes ago.

Mr. TREEN. We have only 4 legislative days, assuming the recess resolution is adopted. So we would run out of time and next Friday would be the last day that we could file. In view of the fact that we are going to be in recess, Mr. Chairman, I urge and request that we be given an opportunity to file the report, and/or minority views, as of the first day that we return—Monday, December 1.

Chairman PIKE. The Chair simply cannot agree to that. That sets us back another whole week.

Mr. TREEN. No, Mr. Chairman. We are not in session.

Chairman PIKE. We will follow the rules of the House. If the rules of the House require that it be delayed until after the recess, that will be done. If the rules of the House do not require that it be delayed until after the recess, that will not be done.

Mr. TREEN. One further inquiry, Mr. Chairman. If the rule then is that the report may not be filed until December 1—because the fifth legislative day would be this Friday when we will not be in session—will the other members of the committee have the right to file their supplementary views up until, let's say, the 30th of November?

Chairman PIKE. As I said to Mr. Johnson earlier, I will follow the rules. I can't tell you offhand precisely what you are entitled to—

Mr. TREEN. We are going to get only what we are legally entitled

to, although we are going to be in recess? Is that what the chairman says?

Chairman PIKE. The chairman is saying you will get what you are legally entitled to and if the recess comes out of that entitlement, you will get more than the Chair really wishes. If it does not, you won't.

I think we have to keep moving on this. If we try to delay it until after the recess—

Mr. TREEN. If Congress is not going to be in session, why not give us an opportunity to use that recess period to file the report on December 1?

Chairman PIKE. The Chair is really trying to cooperate with the gentleman. You know today what you are going to say. You know you are not going to change your views much between now and December 1. There will be an adequate opportunity for you to present minority views.

Without objection, the report will be filed; the minority will have appropriate time to present minority views; and the staff will be in touch with the individual members as to what the appropriate time frame will be.

[COMMITTEE NOTE.—The report discussed above is H. Rept. No. 94-693, "Proceedings Against Henry A. Kissinger"—December 8, 1975.]

Chairman PIKE. The committee stands in recess until 10 a.m. Tuesday morning.

[Whereupon, at 12:02 p.m., the committee recessed.]

U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: COMMITTEE PROCEEDINGS

THURSDAY, NOVEMBER 20, 1975

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON INTELLIGENCE.
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2118, Rayburn House Office Building, the Honorable Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; and Jack Boos, counsel.

Chairman PIKE. The committee will come to order.

Our first order of business will be to vote on a report, a draft of which has been prepared by our staff and copies of which have been made available to all of the members.

The chairman and all the members of the committee have received copies of a letter from the President of the United States. In view of the fact that it is four pages long and all the members have received it, I will not read it at this time. It will, however, be made available to the members of the press.

The essence of the letter—I shouldn't say the essence of the letter; I am not going to try to characterize the letter. The letter contains a request that members of the executive branch be permitted to argue in public before us this morning that which they argued in private with many of our members far into the night last night. I have no objection to their doing so.

[The letter from President Ford, dated November 19, 1975, is printed on pp. 1505-1508 of the appendixes.]

Mr. Leppert, it is my understanding that you are sort of managing your team. I have no idea who is supposed to appear for the executive branch, but the President has requested that witnesses be allowed to appear from the executive branch. Would whomever it is step forward and introduce themselves.

STATEMENT OF ANTONIN SCALIA, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, ACCOMPANIED BY MONROE LEIGH, LEGAL ADVISER, DEPARTMENT OF STATE; MRS. JEANNE DAVIS, STAFF SECRETARY, NSC; WILLIAM FUNK, STAFF ATTORNEY, OFFICE OF LEGAL COUNSEL; AND DANIEL CHRISTMAN, NSC STAFF MEMBER

Mr. SCALIA. My name is Antonin Scalia. I am Assistant Attorney General, Office of Legal Counsel. I have with me some other members of the executive branch.

(1413)

Chairman PIKE. Please introduce the people you wish to have at the table with you.

Mr. SCALIA. Yes, sir; I will.

At my immediate left is Mr. Monroe Leigh, legal adviser, Department of State.

Chairman PIKE. We all remember Mr. Leigh.

Mr. SCALIA. At my far right is Mrs. Jeanne Davis, staff secretary of the National Security Council. To my immediate right is William F. Funk, a staff attorney in the Office of Legal Counsel, and I hope to my far left will be Daniel Christman, National Security Council staff member.

Mr. Chairman, I appreciate your permitting me to appear, at the President's request, to urge your reconsideration of the contempt resolutions voted by this committee on November 14.

Chairman PIKE. That is your pitch—that we reconsider the contempt citations; is that it?

Mr. SCALIA. Yes, sir; that is our request.

Chairman PIKE. OK; all right.

Mr. SCALIA. We believe reconsideration is warranted because—

Chairman PIKE. Do you have a prepared statement, sir, and if so, could we have a copy of it?

Mr. SCALIA. I do not have a prepared statement in a form that could be copied, sir.

Chairman PIKE. I am sorry.

Mr. SCALIA. This meeting was set up rather quickly, as you know, and I will be happy to have it typed in more presentable form and distribute it to the committee afterward.

Chairman PIKE. I am sorry; I thought you were reading. Go ahead.

Mr. SCALIA. We believe, Mr. Chairman, that reconsideration is warranted because the action the committee took was based upon several misunderstandings which should not form the basis of action as serious as this.

Although I intend to make the only formal presentation, these other ladies and gentlemen I have with me, who represent the various agencies involved in this matter, may assist in responding to your questions.

I would like to begin, Mr. Chairman, by placing this matter in perspective. The subpoenas which are the subject of the committee's present action were part of a long process of information gathering which the committee has been engaged in for the past 5 months. As you know, in the vast majority of situations, the information has been obtained informally by committee staff without even the necessity of a formal demand by a committee member, much less a formal subpoena.

In the course of that process, there has developed a constant day-to-day working relationship between your staff and those personnel in the various intelligence agencies who have responsibility for documents requested.

Chairman PIKE. Mr. Scalia, did you prepare the document which you are reading?

Mr. SCALIA. Yes, sir, I did.

Chairman PIKE. What is the source of your knowledge of the relationship between our staff and whomever you are talking about? Have you been participating in these negotiations?

Mr. SCALIA. No, sir; my source as to what work was done by the staff, and as to their relationships and discussions with your staff, is the staff people within the executive branch with whom I discussed these matters.

Chairman PIKE. What you are now doing is presenting to us hearsay which you have obtained from members of the executive branch?

Mr. SCALIA. Yes, sir. It is impossible to bring here all of the people who worked on this thing.

Chairman PIKE. I am just trying to establish the ground rules. First, you do have a prepared statement which you are reading.

Mr. SCALIA. Mr. Chairman, I have a statement which I have prepared that is in rough form in many portions, and therefore I could not copy it.

Chairman PIKE. All right.

Mr. SCALIA. I will give it to you as soon as I can after the meeting.

Chairman PIKE. You are giving it to us now, but I am trying to figure out what the course is. Go ahead.

[Mr. Scalia's prepared statement is printed on pp. 1456-1463 of these hearings.]

Mr. SCALIA. I hope you will reserve judgment on how much of it is hearsay. I have tried to conduct a dispassionate evaluation of what happened and to try to give you my evaluation of what went wrong and what went right.

During the course of the last 5 months, there have also developed certain agreed upon practices as to the manner in which requests are interpreted and complied with, a matter which I will come back to later.

I think you will agree that during these past 5 months this committee has received more information of a highly sensitive nature involving the most confidential matters of military and foreign affairs than has ever before been disclosed to any congressional committee, with the possible exception of a similar committee now functioning in the Senate.

On Friday morning, November 7, seven subpoenas issued by the committee were served upon executive branch personnel. One was addressed to the Director of the CIA. That is not at issue here. A second, which is at issue, was addressed to the Secretary of State. The remaining five were addressed to, and I quote, "the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the attached schedule." Only two of these five subpoenas are at issue. All seven subpoenas, served at approximately 10 o'clock on Friday, November 7, were returnable at 10 o'clock Tuesday, November 11.

Chairman PIKE. Mr. Scalia, do you want to read your whole statement without interruption? Since we don't have a copy of your statement, it is going to be very difficult for me to remember everything you say until you have finished.

Mr. SCALIA. Sir, I don't mind, but I think you may be troubled about some concerns which will be handled later.

Chairman PIKE. What I want to ask you right now is this: Did the White House have copies of the subpoenas before they were served?

Mr. SCALIA. I do not know that the White House had copies; not to my knowledge, sir.

Chairman PIKE. You don't know?

Mr. SCALIA. I believe that the White House did not have copies of the subpoenas in the form in which they were issued.

Chairman PIKE. Of course they didn't because my signature wasn't on them.

Mr. SCALIA. No, sir; that is not what I meant. I cannot say the White House did not, but I do not know that they did.

Chairman PIKE. Mrs. Davis, would you have knowledge of whether the White House had copies of the subpoenas before they were served?

Mrs. DAVIS. I do not know. I had seen no copies of the subpoenas before I received them on Friday.

Chairman PIKE. OK.

Mr. SCALIA. At any rate, all seven subpoenas served at 10 o'clock on Friday, November 7, were returnable at 10 o'clock Tuesday, the 11th, approximately 4 days, and 2 normal working days, after service.

The subpoenas, as a whole, and particularly the five directed to a single agency, the National Security Council—which has a relatively small staff—required an enormous amount of searching for the relevant documents or portions of documents, and, in addition, a large amount of examination of what had been discovered in order to determine whether there might be any proper basis for declining release. No complaint has been made as to the adequacy of compliance with four of these seven subpoenas. As to the remaining three, the committee's action on November 14, asserts a willful and contumacious refusal to comply. It is that decision that we urge you to reconsider.

Let me address first the two subpoenas directed to the National Security Council. One of them sought "All 40 committee and predecessor committee records of decision taken since January 20, 1965, reflecting approvals of covert action projects." I will hereafter refer to this as the 40 Committee subpoena.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1481–1482 of the appendixes.]

The second sought "All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission, and the Central Intelligence Agency, the National Security Agency, the Department of Defense, and the intelligence community staff, since May 1972, relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok agreement of 1974." I shall hereafter refer to this as the SALT subpoena.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1489–1490 of the appendixes.]

I believe, Mr. Chairman, and members of the committee, that those responsible for assembling and producing the requested documents were, with one notable exception, in good faith compliance with the subpoena and even as to that exception did not mean to be contumacious or to violate the law.

Chairman PIKE. Are you telling us that you believe they are in compliance with the subpoena for the 40 Committee data?

Mr. SCALIA. No, sir; that is the one notable exception that I was referring to.

Chairman PIKE. You say they are in compliance with the whole subpoena?

Mr. SCALIA. I will address it later, if I may.

Chairman PIKE. OK; but you are saying that of these two subpoenas they are in compliance, in your judgment, with one?

Mr. SCALIA. I believe so, sir—in good faith substantial compliance with one. I think there is a problem with the 40 Committee subpoena, and I will discuss it in due course.

Chairman PIKE. Let's talk about the one you think they are in compliance with. Have you examined the papers which were delivered to this committee?

Mr. SCALIA. Yes, sir, I am about to discuss it.

Chairman PIKE. All right. Go ahead.

Mr. SCALIA. Mr. Chairman, I normally don't mind being interrupted in the course of a presentation, but I think it will be easier if you let me proceed.

Chairman PIKE. I want to make this very clear: I asked you whether you had a prepared statement, and you said "No." I don't know how long your statement is, but we can't remember everything you will have said. It looks to be many pages long. We gave you permission to testify. We did not require a copy of the statement in advance although our rules say that you shall provide a copy of the statement in advance.

You are now saying that we are supposed to sit here and not interrupt you, while you go through that long statement that we have no copy of and make your pitch in public, and then we are supposed to remember everything you said to question you on.

It doesn't work very well.

Mr. McCLORY. Will the chairman yield?

Chairman PIKE. Certainly.

Mr. McCLORY. I support, of course, the gentleman and this delegation being here this morning. I am very anxious to hear from them, but it seemed to me, and my understanding was, that there was to be an explanation as to why there could not be compliance, or why there should not be any further action taken. Actually, this review and this summary of events that have already occurred, which may or may not coincide with what our information is or what our understanding of the relationship is, is just a little extraneous.

Mr. SCALIA. I think I am done with that, Mr. McClory, and am about to come to the discussion of the items in the subpoena.

Mr. McCLORY. We know what we received in response to the subpoena. If you could tell us what we received subsequent to the time that there was an initial response to the subpoena, including what was received before the committee took action with regard to the contempt resolution or subsequent to that, or if you can discuss some way in which we can get what we need without effecting this confrontation, you can be very helpful.

Mr. SCALIA. I will do that. I would like to discuss—

Chairman PIKE. May I just ask you one more question? How long is your statement?

Mr. SCALIA. In time I do not know, sir, because I have never read it to myself.

Chairman PIKE. In pages?

Mr. SCALIA. Twenty-three pages.

Chairman PIKE. Well now, this is exactly what I am talking about. You know, and we know, that the House has recessed. You know and we know, that we have another hearing scheduled for this morning.

Mr. SCALIA. I didn't know that. I am sorry.

Chairman PIKE. You ask us to sit here while you read 23 pages of a statement, which would be called, I believe, in any court, a self-serving document, to just stop the committee cold, while you read 23 pages of a statement, preferably without our ever interrupting you.

Go ahead. There are going to have to be interruptions.

Mr. SCALIA. I would like to commence, Mr. Chairman, by discussing several reasons why, as a matter of law, it is not in my view possible to charge Secretary Kissinger with the responsibility for compliance with these two subpoenas I just discussed.

Chairman PIKE. Maybe we can short circuit this a little bit. Your argument is that the President had announced that Secretary Kissinger was no longer going to be the Special Assistant to the President for National Security Affairs. Is that what it boils down to?

Mr. SCALIA. Not that the President announced it, sir, but as the President's letter to you stated, he was not.

Chairman PIKE. Who was?

Mr. SCALIA. It is not necessary that anybody have been.

Chairman PIKE. What you are telling me is that there was no Assistant to the President for National Security Affairs; is that it?

Mr. SCALIA. I believe that is the case, sir.

Chairman PIKE. Had Mr. Kissinger resigned?

Mr. SCALIA. Yes, sir. I think that is the import of the President's statement to you.

Chairman PIKE. Was there any document in writing that conveyed that resignation?

Mr. SCALIA. I do not know that there was. I do not believe there was.

Chairman PIKE. Has his successor been sworn in?

Mr. SCALIA. Pardon?

Chairman PIKE. Has his successor been sworn in?

Mr. SCALIA. I do not believe his successor has been sworn in.

Chairman PIKE. OK. Go ahead.

Mr. SCALIA. I may add, a written resignation is not necessary and doesn't affect the matter.

Mr. McCLORY. Would the chairman yield?

Chairman PIKE. Certainly.

Mr. McCLORY. Is it your position that, because of the President's action taken with respect to Mr. Kissinger in his role as head of the National Security Council and the subsequent replacement of him by Mr. Scowcroft, the office was vacant and therefore there was nobody to respond and no way for this committee to compel compliance with our demand?

Mr. SCALIA. Well, technically, Mr. McClory, I do not believe that the Assistant to the President for National Security Affairs is the Chairman of the National Security Council or is anything except the Assistant to the President for National Security Affairs. I am not asserting—

Mr. McCLORY. Is this a technical defense, or is there something substantially wrong with our requests?

Mr. SCALIA. No.

Chairman PIKE. What you are saying is that we got the wrong guy.

Mr. SCALIA. I don't think it is technical at all. I think the subpoena was addressed to the Assistant to the President for National Security Affairs, and in fact Mr. Kissinger was not that at the time the subpoena was served. That is one point.

Mr. McCLORY. Would the chairman yield for a further question?

Wasn't the subpoena directed to the Assistant to the President for National Security Affairs or any subordinates, so that—

Mr. SCALIA. Right. I was about to come to that, Mr. McClory. And this is the second reason why, as a matter of law, I don't believe this proceeding would properly lie. The subpoena was, as I indicated, addressed to the Assistant to the President for National Security Affairs, or any subordinate officer or employee who had possession of the documents requested. If you will examine the return on the subpoena, the return was signed not on behalf of the Assistant to the President for National Security Affairs, but by a White House official on behalf of the staff secretary to the National Security Council.

Chairman PIKE. You are not taking the position that every time a subpoena is served in the Government, it must be served on the particular individual, are you?

Mr. SCALIA. No; but it must be served on someone for him, and the fact of service with respect to this subpoena is that it was served on—at the express request of the person serving it—it was accepted on behalf of, the staff secretary of the NSC. That was the server's direct request.

Chairman PIKE. Are you saying the service was bad?

Mr. SCALIA. No.

Chairman PIKE. OK.

Mr. SCALIA. The service was bad upon Mr. Kissinger, if that is the import of your question. It was not purported to be accepted on his behalf.

Chairman PIKE. Don't you think you might have raised that particular issue when the subpoena was returnable instead of waiting until after the contempt citation?

You knew it when it was returned.

Mr. SCALIA. We did not know that you insisted Mr. Kissinger receive it. In fact, Mr. Chairman, a dialog in this committee at the time the subpoena issued read as follows—

Chairman PIKE. Who at the present time is the Assistant to the President?

Mr. FIELD. I believe the subpoena would still be directed to Dr. Kissinger because General Scowcroft has not been sworn in yet; but it will be directed to the office, so it really makes no difference who is occupying the office.

We had no reason to believe you insisted this be received by Secretary Kissinger. Your committee itself, if its expression is to be believed, didn't care.

Chairman PIKE. I frankly am not going to spend the morning arguing the legal case, which is not proper argument here.

Mr. SCALIA. I thought that is what the committee had before it in deciding whether somebody—

Chairman PIKE. What the committee has before it at the moment, as I judge it, is you saying we served the wrong guy and this administration, which heretofore has been proclaiming its protection of the

lower- and middle-level employees of the Government, is now taking the position that we should have addressed our contempt citation to some secretary.

Mr. SCALIA. You didn't serve the wrong guy, Mr. Chairman. You brought your citation of contempt against a person who had not been served, which is fundamental to a finding of contempt. Secretary Kissinger did not believe, or have any reason to believe, that he had responsibility for compliance with these subpoenas.

Mr. KASTEN. Mr. Chairman.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Your position is the same as the position of the President in his letter, when he says, "Thus there is no basis for the resolutions addressed to Secretary Kissinger on these subpoenas."

That is, in a sense, what you are saying. Now—

Mr. SCALIA. Plus a second point, Mr. Kasten; and the second point is that even if he had been, at the time, the Assistant to the President for National Security Affairs, the subpoena could be served either on the assistant to the President or on a subordinate officer. The return which is before you shows that it was served on a subordinate officer and not on the assistant to the President.

Mr. KASTEN. Are you suggesting that had we outlined, or had we detailed, the subpoena in a different way, we would have gotten a different result; in other words, we would have gotten papers back without the deletions?

Mr. SCALIA. No, sir.

Mr. KASTEN. How could we rewrite the subpoenas so that they would be technically correct from your point of view? If you would just suggest to the committee how to rewrite the subpoenas so they could be reissued, we would be willing to amend the subpoenas in order to fit your technical problems and we could probably get this whole problem worked out.

How do we get the information that we seek, in your view?

Mr. SCALIA. I was about to tell you, Mr. Kasten, but later on toward the end of the 23 pages. There are many problems here—legal problems and problems of the compliance with the subpoena—which I want to discuss.

I don't want to dismiss the whole thing by saying you served the wrong person. I think the executive branch should have complied properly, regardless of who was served. I feel bad for the executive branch, whether it was Secretary Kissinger who was responsible or somebody else.

Mr. KASTEN. As a result of your testimony this morning, will we understand how to draw the subpoenas so the executive branch will respond?

Mr. SCALIA. I think you will understand how we can get out of the fix we are in and how the committee can get the information it wants, and I think the country can be better served.

Mr. KASTEN. Did you say, if I heard you correctly, that "I think the executive branch should have complied"? Is that what you said, just a moment ago?

Mr. SCALIA. Yes, sir.

Mr. KASTEN. Why didn't they comply? Because of a technical deficiency in the subpoenas?

Mr. SCALIA. I cannot answer that question with a one sentence description. I think that is unfair.

Mr. KASTEN. We will go on with the testimony.

Mr. SCALIA. That is all I ask to do.

Chairman PIKE. Let's move now from the technical objection to the substance.

Mr. SCALIA. Mr. Chairman, although I had no part in the compliance process myself, I have interviewed in some depth the individuals who did. And on the basis of that inquiry, I am convinced, first, that there was technical noncompliance and indeed substantial noncompliance in the case of one subpoena. And second, given the circumstances and the motivation, you should not deem that noncompliance to constitute contumacy.

Let me address first of all the SALT subpoena and clear away some of the underbrush by discussing some elements I believe the committee regards as noncompliance, but which in fact do not constitute that. There was discussion in a staff interview on the day the contempt resolutions were voted of a foot-high stack of documents which should have been supplied in addition to the half inch that was supplied. Those documents have since been provided. They actually measure somewhat under one foot, I believe. The vast majority of them, however, were thought, and I believe reasonably thought, not to be required by the subpoena.

The confusion stemmed from the fact that the subpoena requested, in part—this is the language—“All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission.” In fact, the Arms Control and Disarmament Agency, ACDA, has no Standing Consultative Commission. The Standing Consultative Commission is not an agency of the United States but a joint United States-U.S.S.R. Commission established for purposes of working out SALT negotiations. There is, of course, a U.S. component of the Commission, but virtually none of the material which that component would furnish to NSC would relate to the SALT compliance policy matters which were understood to be the main object of your inquiry.

Thus, those responsible for assembling documents to comply with the subpoena interpreted the phrase, “Arms Control and Disarmament Agency's Standing Consultative Commission”—which makes no sense if read literally—to refer to ACDA documents, Arms Control and Disarmament Agency documents, bearing upon the work of the Standing Consultative Commission. This interpretation is rendered all the more plausible an explanation of the erroneous language of the subpoena by virtue of the fact that the Chairman of the United States component of the Commission was Deputy Director of ACDA. And it was thus thought that the Committee staff had in mind documents of the sort which appear over his signature but on ACDA stationery.

Thus, the failure to provide documents furnished by the Standing Consultative Commission does not, in my view, constitute any noncompliance, much less willful noncompliance, with this subpoena.

Chairman PIKE. All right, now that I understand—or at least I think I understand—what you are saying, I think Mr. Kasten ought to be allowed to ask this question, because he asked it so well before.

Do you want to try again, Mr. Kasten, or may I?

Mr. KASTEN. Go ahead, Mr. Chairman.

Chairman PIKE. Can we get the documents?

Mr. SCALIA. You have them, Mr. Chairman.

Chairman PIKE. Are you sure? Have you examined what we have?

Mr. SCALIA. The ones that I referred to in what I have just discussed and which originally were not provided—that is, those coming from the Joint Consultative Commission, which we thought, or the people that did the work thought, were not required—have now been provided, and I think you will find them generally uninformative.

Chairman PIKE. You just referred to the Joint Consultative Commission.

Mr. SCALIA. I am sorry, the Standing Consultative Commission.

Chairman PIKE. We would like those from the Standing Consultative Commission.

Mr. SCALIA. Yes, sir, the Standing Consultative Commission.

Chairman PIKE. Mr. Field tells me what we got was a list of the documents, but not the documents themselves.

Mr. SCALIA. They have either been provided, Mr. Field, or you have been advised that they are there for you to get whenever you want them.

Chairman PIKE. This morning, as you sit here and tell us we have the documents, we do not have the documents.

Mr. SCALIA. That is a slip on my part. They have all either been furnished or Mr. Field has been told they are there for you to get whenever you want them. There is a bulk of them and most are non-informative.

Mr. Field, is that a correct understanding or not? Have you not been told you can see them anytime you want?

Mr. FIELD. Access is not providing the documents. The subpoena calls for the documents to be turned over to us. The documents have not been turned over to us. It is that simple.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. If the chairman will yield, I examined physically what had been turned over to the committee at the time that we considered whether or not a contempt citation should be issued; and at that time, we had this printed set of documents and that was all, according to the staff.

Since then we have received additional documents—these—and these are from the CIA, I understand. It was my impression, however, that what the staff wanted were the CIA documents relating to non-compliance with the SALT I agreement.

Now, I think there may be misunderstandings here as to what the committee wants and what the staff requires in order to effect compliance with our needs in investigating this area. I want to ascertain the fact that we have received additional information since the original delivery.

Mr. SCALIA. Yes, sir, that is correct.

Mr. FIELD. Mr. Chairman, if I could respond briefly on this.

Chairman PIKE. You certainly may, Mr. Field.

Mr. FIELD. We have the additional documents, pointed out here, that came in from the National Security Council. Then we have these that came in from CIA separately. The documents that came in from CIA—which were in fact sent to the National Security Council—

are not included among the documents that came in from the National Security Council, even though both sets were cleared through the White House.

Mr. SCALIA. Mr. Field, it is not the case that the National Security Council retains every document that it ever receives. It is not only entirely possible, it is the case that there are documents which are in the possession of other agencies which——

Mr. FIELD. Are some of these documents within the last few weeks?

Mr. SCALIA. Yes, sir, and they were provided to you, as I understand it, through the guidance of the National Security Council in telling you what other agencies to go to which might have documents. Is that not correct? Is that correct?

Mr. FIELD. We got these documents on our own a long time ago from the CIA. It took about a week or two for us to get them, going through the regular process.

Chairman PIKE. I just don't think this is a proper forum for a great hassle over what documents have and what documents have not been received. I think that——

Mr. JOHNSON. Mr. Chairman?

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. I didn't mean to interrupt. I am sorry.

Chairman PIKE. I don't think that you, sir, have any knowledge of what documents have been received, except what somebody else has told you.

Mr. SCALIA. Yes, sir, that is correct. I tried my best to find out. I have checked with the people in question and they have read my testimony, and that is the best way I know of getting the facts before you.

Chairman PIKE. Who did you check with?

Mr. SCALIA. I can't provide a list.

Chairman PIKE. Who did you check with?

Mr. SCALIA. The people here.

Chairman PIKE. Did you in any manner check with Mr. Kissinger or Mr. Kissinger's deputy?

Mr. SCALIA. Mr. Kissinger knew nothing whatever about the matter; Mr. Chairman, he would have known nothing about it.

Chairman PIKE. Mr. Kissinger didn't know what documents had been provided to the committee?

Mr. SCALIA. Not with respect to the two subpoenas I am talking about now.

Chairman PIKE. He had no voice in the decision?

Mr. SCALIA. No, sir.

Chairman PIKE. He was not present at a White House meeting three nights ago, when this whole matter of what would be provided to this committee and what would not was discussed?

Mr. SCALIA. I was not present myself, Mr. Pike, so I can't tell you.

My point is that he had nothing to do with the collection or supervision of the collection of these documents in response these subpoenas.

Chairman PIKE. You don't know whether he was present at a meeting in the White House?

Mr. SCALIA. No, sir; there may well have been White House meetings concerning the——

Chairman PIKE. I am talking about a specific meeting—three nights ago, I think—when what would and what would not be provided to this committee was discussed.

Mr. SCALIA. No, sir, I know nothing about it.

Chairman PIKE. I do.

Mr. JOHNSON. Mr. Chairman?

Chairman PIKE. Go ahead.

Mr. JOHNSON. I just wanted to have this established clearly: Has the information that was called for by the subpoena been made available? Has a list of all this information been made available to the staff, so it is clear that we have access though it has not been delivered? Is that the fact?

Mr. SCALIA. For this one category I was talking to.

Mr. FIELD. Mr. Johnson, the only documents we have been offered access to are the SCC memoranda. We have been offered access to none of the other material.

Mr. SCALIA. That is the category I was discussing; and the reason we prefer to make them available, rather than deliver them, is that it is a regulation of the Standing Consultative Commission—which, as I say, is not just a U.S. agency but a joint U.S.-U.S.S.R. group established by treaty—that none of its documents will be made public without the joint consent—

Mr. JOHNSON. That is another issue, and I don't want to get into it at this point. The first question I want answered is whether the documents we have subpoenaed have been provided, at least in a list form, so that we can identify them and whether we are allowed to have access. Is that the case or isn't it? Is there something we don't have access to that we have subpoenaed?

Mr. FIELD. The answer is no; we have not been given access to dozens and dozens of documents and types of documents which we can identify the National Security Council has with respect to SALT compliance. We have not been given access; we have not been given the documents. In fact, letter after letter comes in here denying that the documents exist, and then letters follow providing bits and pieces of them, saying that the documents exist, but they can't find any more.

Mr. SCALIA. Mr. Johnson, to the best of my knowledge that is not true.

Mr. McCLORY. Mr. Chairman?

Chairman PIKE. Mr. McClory.

Mr. McCLORY. I supported the issuance of this subpoena. Statements and charges have been made by responsible individuals and knowledgeable individuals of violations of the SALT I agreement, and apparently individuals do have information about this. It is appropriate for this committee to determine whether or not there is an intelligence failure, and whether or not there are facts which bear on the subject of noncompliance with or violation of SALT I. It is that information which the committee must have if we are going to assume our responsibilities and fulfill our mandate.

Mr. SCALIA. Mr. McClory, we do not intend to withhold any of that information from the committee. We have no intention of asserting executive privilege with respect to any of it, and it is my information that all of it is available to the committee.

Mr. McCLORY. I would say, from my conversation with the staff, that information has not been forthcoming—has not been delivered—

and it is that which it seems to me we have to have in some appropriate form.

We are going to have witnesses who will testify about this, but for witnesses to testify about information that they have and which is in the possession of the executive branch in this area just—

Mr. SCALIA. Mr. Chairman, I believe there is some misunderstanding in this area. I would like to describe another area of documents which I think will resolve the confusion.

Chairman PIKE. Let me ask a question. When was the index provided, Mr. Field?

Mr. FIELD. Last night.

Chairman PIKE. The index appears to be limited only to documents of the year 1975. Are you telling me that there were no documents prior to the year 1975?

Mr. CHRISTMAN. Mr. Chairman, might I address that?

Chairman PIKE. You might.

Mr. CHRISTMAN. The substance of the SCC meetings that dealt with compliance only took place during 1975.

Chairman PIKE. The what of the SCC?

Mr. CHRISTMAN. The substance—the meetings.

Chairman PIKE. I am not interested so much in sessions as I am in documents. Are you telling us that there were no letters or cables or requests for information from Geneva regarding compliance with the SALT agreement prior to 1975?

Mr. CHRISTMAN. Yes, sir; there were a few, and to the best of my knowledge those have either been provided or made available.

Chairman PIKE. How would we know where they were if they weren't listed in the index?

Mr. CHRISTMAN. They should be listed in the index.

Chairman PIKE. Are they?

Mr. CHRISTMAN. If I may have a copy of the index, I might take a look at that.

Chairman PIKE. You are cleared for top secret sensitive?

Mr. CHRISTMAN. Yes, sir.

Mr. FIELD. Mr. Chairman, I would like to respond briefly to Mr. Scalia's statement that what I said was not true—that these things had been provided. Let me list a few documents which we have identified that have not been provided to us. Mr. Scalia, you are probably not familiar with these because I have not seen you in these sessions and I don't know what your experience is with SALT topics. But these are some of the documents we are looking for:

First, national intelligence estimates from the intelligence community staff before and after SALT I and before and after the Vladivostok talks on Soviet missile strengths, such as NIE-11-3/8/74 and NIE-11-3/8/75.

Second, the NSC white paper on SALT compliance issues.

Third, memorandums between Stoeritz and other CIA employees and the NSC which dealt with the terms of reference in the SALT monitoring reports from 1972 to 1973.

Chairman PIKE. Mr. Field, I just don't think we can—

Mr. FIELD. The list goes on for some four pages.

Chairman PIKE. Very frankly, I think they are aware that we haven't gotten the documents we have subpoenaed.

Mr. Kasten.

Mr. KASTEN. I just want to ask one question of the staff. Has that specific list of documents we desire, which you have there, been made available to at least one of the gentlemen at the table? Do they know specifically what we want?

Chairman PIKE. Mr. Kasten, let me respond in part to that. The President of the United States asked Mr. McClory and me to deal with Mr. Marsh, who is our liaison person in this matter. Mr. Marsh has been made fully aware of these documents and he knows what we want.

Mr. FIELD. Mr. Kasten, during our negotiations last night, we went over, again, the kind of documents we want. I did not provide a specific list of specific documents which we can identify because, as I said last night, the only tool I have for verification is that at this point I can identify some 40 or 50 documents—we add to it every day. If a stack of papers comes in, the only double check I have is to go through them, and if 35 out of the 40 are there, I know I have something approaching compliance. If only one is there, I know I don't. I am certain that if I were to turn over a list of 40 documents, 40 would come in the next day, plus 1 or 2 extras. I would lose my verification procedure.

Chairman PIKE. Mr. Kasten, I believe I have to correct what I said about Mr. Marsh. I think, since we didn't get the index of the 1975 items until last night, it is quite possible that Mr. Marsh was not given a specific list of the documents we want because, as you well know, we don't always know the titles of the documents we want until we get some indication of what documents there are.

Mr. SCALIA. Mr. Chairman, I repeat, there is no intention on the part of the executive branch to withhold any of the SALT documents that you have requested. To our knowledge, we are not withholding any. There are several other reasons that I might discuss as to why the documents received in response to the subpoena do not seem to the committee or the staff of the committee to comply with what you expected to receive.

Another reason for the apparent discrepancy is the fact that the subpoena seeks all documents furnished by a number of agencies but does not state furnished to whom. Both because of our understanding from the committee staff that NSC files were the object of the subpoena and because of the fact that the service was specifically made upon the staff secretary to the NSC, our personnel assumed—and again I think quite reasonably—that the scope of the subpoena was limited to documents furnished to the NSC.

There are many documents which come to the Assistant to the President for National Security Affairs—who by title, is not, by the way, either the head of or a member of the NSC—which are not transmitted to the National Security Council, but are instead forwarded to an entirely separate system of files outside the jurisdiction of NSC, known as the Presidential files. Some documents relevant to SALT compliance took this route and hence were not found in the NSC files.

I acknowledge, Mr. Chairman, that the decision not to examine the Presidential files for such information, though technically in compliance with the subpoena, was erroneous. It did not display that degree of cooperativeness in providing the substance of what the committee desired which has been our objective. And when the decision

to omit Presidential files came to the attention of those having supervisory authority over the project, a supplemental search of the Presidential files was ordered which resulted in a supplementary production of documents to the committee on November 13, 2 days after the original return date.

We wish these documents had been provided in the original submission, but they were not strictly required; and in view of the extreme time limitations under which those charged with the search were operating, I hope you will find the initial decision to omit the Presidential files understandable.

Finally, there were omitted from the search and from the production, internal documents and memorandums of the NSC itself. These are not called for by the subpoena unless one interprets the language, "the intelligence community staff" to refer to the NSC staff, which is simply not a reasonable interpretation. Those responsible for the search interpreted that phrase to refer to the U.S. Intelligence Board, which is composed of staff representatives of the entire intelligence community. The phrase "intelligence community staff" seemed much more applicable to that. I believe that interpretation was correct.

Let me now come, Mr. Chairman, to those documents, few in number—I believe about 25—which were, in my opinion, withheld contrary to the technical requirements of the SALT subpoena. These consist of documents which were treated as immune from disclosure because they dealt with recommendations and advice to the NSC or to close Presidential advisers.

I would like to say that these documents were merely temporarily withheld in order to obtain advice from the Justice Department and a determination by the President with respect to the assertion of executive privilege. Given the time frame within which production had to be completed, this course of action would not have been unreasonable. In fact, however, I can find no evidence of such clarity of intent. Though these documents were ultimately submitted to the Justice Department for its judgment as to the assertion of executive privilege, I have no reason to believe that that was the clear, original intent. Rather, I believe that what occurred was merely the carrying over into the area of subpoenaed documents the procedures which these same personnel—none of whom are lawyers—had constantly been employing with respect to the numerous nonsubpoena requests of the committee. As you know, that procedure has been to permit the withholding of some documents, or certain deletions, with the understanding that if the committee staff wants further disclosure they can come back and ask for more. When dealing with a formal subpoena, however, I acknowledge that it was incorrect to proceed in this fashion.

On the other hand, the error is understandable. It is difficult to change the rules in the middle of the game, and indeed this committee and its staff have been tolerant of such a practice with respect to other subpoenas in determining that the withholding of a relatively small amount of information will not destroy substantial compliance. I believe the same situation exists with respect to the SALT subpoena, once the committee realizes that the vast bulk of that foot high stack of documents—which it erroneously believes was withheld—were, in fact, not covered by the subpoena.

There remains the question of what is to be done with respect to the information which I have described as withheld. That is no longer a problem. All of the documents which I have discussed—not only the relatively few which were erroneously withheld, but a much greater number that were withheld because they were not called for—have either been provided to the committee or made available for inspection by the committee or its staff.

That is my clear understanding, Mr. Chairman. If it is wrong, I would be pleased to have the committee tell us the documents and we will try to find them.

Chairman PIKE. Let's go back to this gentleman over here. Mr. Christman, do you find items prior to the year 1975 listed in the index?

Mr. CHRISTMAN. Yes, sir.

Chairman PIKE. You do?

Mr. CHRISTMAN. Yes, sir.

Chairman PIKE. Have all those documents been provided to the committee?

Mr. CHRISTMAN. Yes, sir.

Chairman PIKE. Are you sure?

Mr. CHRISTMAN. To the best of my knowledge, any document that predated 1975, which related to compliance and was either a cable or message to the NSC or letter to the NSC staff, has been provided or made available to the committee.

Chairman PIKE. Do you know when it was provided?

Mr. CHRISTMAN. Some in—I believe, Mrs. Davis—in the course of last evening, and I am looking in particular at letters from—

Chairman PIKE. What you are saying is some were provided last evening. What about the rest of them? Not yet?

Mr. CHRISTMAN. There are no others, sir, except—

Chairman PIKE. There are no others?

Mr. CHRISTMAN. Not in our files, nor to the best of my knowledge were they ever sent to our staff.

Mr. SCALIA. Mr. Chairman, this is a category we do not think technically covered by the subpoena anyway. The fact that it was provided last evening—

Mr. CHRISTMAN. One additional point, if I may, sir, is to reemphasize the SCC compliance. The sessions didn't begin until January 28, 1975, and there would be only two or three documents in 1974 that related to contemplated sessions.

Chairman PIKE. I hear what you say.

I would like you, Mr. Christman, to come out in that anteroom and talk to me very briefly.

Mr. TREEN?

Mr. TREEN. I just want to ask this question. Do I understand you said approximately 25 documents had been withheld pending the determination regarding executive privilege?

Mr. SCALIA. I understand that is the number. I did not examine the documents myself.

Mr. TREEN. Regardless of the number, what has happened now? Has a decision been made to invoke executive privilege?

Mr. SCALIA. No, sir; no executive privilege will be invoked with respect to any SALT I documents.

Mr. TREEX. I wanted to get that clear. In other words, that was an explanation of why there was some delay in those documents?

Mr. SCALIA. No, sir. I am afraid I was trying to be too—What I said was that I would have liked to have been able to say that the explanation was that we held them back because someone said we had better look at them carefully for possible assertion of executive privilege. I don't think there was that clarity. I think someone said this is so sensitive we had better not let it go—which is the way they had proceeded ordinarily in dealings between your staff and our people.

Mr. TREEX. The point is there are no documents now that are being withheld on the claim of executive privilege; is that correct?

Mr. SCALIA. That is exactly correct—for SALT I, which is all that the subpoena asked for.

Mr. TREEX. Well, I am not sure I agree with that. It talks about the Vladivostok agreement as well.

Mr. SCALIA. Yes, but I think there is nothing in the Vladivostok agreement which pertains to compliance. The Vladivostok agreement is just an agreement as to what the general starting point will be for the SALT II talks.

Mr. TREEX. You have stated that there is no claim of executive privilege with regard to this particular subpoena?

Mr. SCALIA. No, sir, and the reason is that the committee made it clear they considered this to be an area where they were looking at possible wrongdoing. We made the decision, for that reason, we would not hold anything back.

Mr. TREEX. All right; I wanted to get that clear.

Thank you.

Mr. GIAIMO [presiding]. May I ask a question? When did you become involved in this controversy and this struggle?

Mr. SCALIA. I have been on the outside of it—

Mr. GIAIMO. I am not interested in how long you were on the outside. I want to know when you got on the inside of it.

Mr. SCALIA. It depends on what you mean by on the inside.

Mr. GIAIMO. That depends on what you mean by on the outside.

Mr. SCALIA. I guess it does. I guess we agree then.

Mr. GIAIMO. You have been making a lot of statements here to which I am trying to pay close attention. After all, you are here speaking for the executive branch of the United States and I am a little saddened by this spectacle of two branches of Government seemingly appearing to be in bitter combat over what we both claim to want to do, and that is to enlighten the American people on what is going on in their Government.

But I am curious as to how long you have been privy to these secret decisions in the area of intelligence, and also those decisions involving what the executive branch is going to do vis-a-vis the Congress and compliance. How long have you been involved?

Mr. SCALIA. Regularly. I think is the answer. I was not trying to be cute. I am regularly involved in assisting the Attorney General in such matters as his advice to the President on whether executive privilege should be asserted.

Mr. GIAIMO. You work for the Attorney General, don't you?

Mr. SCALIA. Yes, sir.

Mr. GIAIMO. Are you present at meetings? You indicated, if I recall correctly, that you were not present at a meeting held at the White House the other night?

Mr. SCALIA. No, sir.

Mr. HAYES. Will you yield?

Mr. GIAIMO. Yes.

Mr. HAYES. I don't know exactly where we want to go, but are you challenging his authority?

Mr. GIAIMO. No.

Mr. HAYES. I don't really understand what this direction is leading to.

Mr. GIAIMO. I am briefly trying to get a picture of whether or not he was present when decisions were made.

Mr. HAYES. I don't think that has any relevance. I don't mean to step on your toes. I don't mean to try to be contumacious myself—since we are discussing that word—but I really don't think it is proper to engage this gentleman in this kind of discourse—you know, we are on some important matters—about what is inside his head or where he has been traveling around.

If I may, Mr. Chairman, I have a couple of questions myself I would like to direct.

Mr. GIAIMO. Let me complete this. I want to know how long he has been involved in these discussions and whether he was involved with Mr. Marsh—or any of these other people. Then I will yield to the gentleman.

Mr. SCALIA. I had nothing to do with securing compliance with these subpoenas, which is one of the reasons I was asked to make the study rather than somebody who was deeply involved in it. Some of my judgments are critical about what was done. I believe they are honest judgments. I confess I have no first-hand knowledge, but I have tried to find out as best I can what happened.

Mr. GIAIMO. What I am trying to clear up is that fact.

As I gather, you are here arguing, as one from the Department of Justice, first, that there is a claim of executive privilege on one of the subpoenas?

Mr. SCALIA. Yes, sir.

Mr. GIAIMO. And you are giving justification for that?

Mr. SCALIA. Yes, sir.

Mr. GIAIMO. Second, as to the other two, I believe your argument is that there is substantial compliance and defect in the service. Is that right?

Mr. SCALIA. Yes, sir. Substantial compliance in one. In the other, I think it is fair to say that there may not have been substantial compliance, but I don't think there was the kind of maliciousness that should appear before you take this drastic step that is about to occur.

Mr. ASPIN. Just to move the thing along—just to keep the discussion going into some kind of relevant direction—you are saying on the SALT documents you have given everything. It is the contention of our staff you haven't given everything. You say every piece of paper is available or has been delivered.

Why don't you move on to the 40 Committee subpoena?

Mr. GIAIMO. Mr. Hayes, did you have a question?

Mr. HAYES. It is all right.

Mr. ASPIN. Go on to the 40 Committee subpoena.

Mr. SCALIA. The 40 Committee subpoena sought all 40 Committee and predecessor committee records of decisions taken since January 1965 reflecting approvals of covert action projects. Here it cannot be reasonably asserted there has been substantial compliance. I was frankly startled, as I expect you were, upon realizing the utterly uninformative nature of much of the material provided in response to this subpoena.

Chairman PIKE. I will only say that I was not startled.

Mr. SCALIA. There are really two deficiencies here that must be explained separately.

First, there is the deletion of names of individuals and countries from all of the submissions under the subpoena. These are the only deletions made with respect to covert action approvals in those documents that are entitled—I think they are on the top of the stack you received—“40 Committee decisions,” or “40 Committee approvals.” They are formalized documents. The only deletions in those were the deletions of names of countries and individuals and possibly dollar amounts.

My investigation satisfies me that the personnel responsible for this submission knew, not only that the subpoena by its terms did not permit such deletion, but also that the committee staff did not approve the deletions. The reason for the deletions—a position which I believe was well known by the committee staff—was that to provide such information identified by country and names of individuals regarding all covert actions over a 10-year period—to be held in one place and to be distributed freely within and among the committee and its staff—would provide a security threat of unacceptable dimensions. You are talking about all the covert actions, with the names of the countries, dollar amounts and names of individuals, for a 10-year span. I hope you can understand the concern about putting that all together in one place. This problem had been raised with the committee staff before the subpoena was issued and, while an accommodation of interests had not been worked out, it was believed that the committee understood and respected our difficulty and that an arrangement satisfactory to both sides could be devised.

I think these deletions were improper, but from my discussions with the individuals involved, I believe that they acted not in a spirit of contumacy, but rather in conformance with what they regarded as a continuing process of reaching accommodation of very difficult problems with the committee. Their action must be seen in the light of the fact that the executive branch intelligence personnel and the committee staff had been regularly operating, before the subpoenas were issued, on a day-to-day basis under a system which would permit such deletions in making responses to voluntary requests, with the expectation that the committee staff, when the deletions were too disruptive to the purpose of the request, would seek further information.

Indeed, shortly after these documents were delivered, our personnel proposed alternative methods to your committee staff which might accommodate their needs in some other fashion. Again, I do not dispute that this kind of haggling in response to a categorical subpoena is not proper.

Mr. McCLORY. Mr. Chairman, I think we should explain that in the meeting you and I had with the President of the United States with

regard to the securing of classified information—and, of course, we can't carry on an investigation without getting into classified material—we specifically said we were not demanding the names or the identities of individuals, or sources or methods; we were not objecting to the deletion of those before delivery to the committee.

When you state the staff wanted that and the committee wanted that, you are stating incorrectly what this committee wants. We are not trying to get that information. But——

Mr. SCALIA. I am happy to hear that——

Mr. McCLORY. When the 40 Committee operates, if it operates with regularity, in accordance with a particular system with respect to a certain type of covert operation, that is the information we want. We want to know whether projects are approved in accordance with a regular plan or whether approval is irregular, and whether the projects are within the range of appropriate intelligence activities.

Now, that might be of interest to us, but there can be certain deletions without making the information entirely meaningless to the committee. There is a vast difference there.

Chairman PIKE. Mr. McClory, I want to say I disagree to a rather substantial extent with your characterization of our agreement, but I think once again this is not necessarily the correct forum to go into this.

For example, a document which says "The 40 Committee approved a —— operation in ——" deletes the names of a country. We never made any such agreement—ever—that such a deletion would be permitted.

Mr. McCLORY. I think the chairman is right as far as the country is concerned. We wanted to exclude the identity of individuals—the names of individuals——

Chairman PIKE. We wanted to protect people whose lives may still be in danger, but let's go on from there.

Mr. SCALIA. Again, Mr. Chairman, I do not dispute——

Chairman PIKE. You say there was noncompliance. We are agreed.

Mr. SCALIA. In view of the extreme sensitivity of these materials, in recognition of the continuing process of which these subpoenas were only a part, and in acknowledgment of the fact that accommodations had in fact been accepted with respect to other subpoenas, I think you should not regard this action as motivated by a contumacious spirit because I do not think it was.

A second and totally separate problem with the 40 Committee production involves not specific deletions——

Chairman PIKE. You are here as a lawyer. Let me ask you a question: What is the basis for not providing the information set forth in the 40 Committee subpoena—the legal basis?

Mr. SCALIA. I said, Mr. Chairman, that the deletion of the names without prior authorization by the President for assertion of executive privilege was not proper.

Chairman PIKE. Have you looked at the documents they gave us?

Mr. SCALIA. Yes, sir; I have.

Chairman PIKE. All right. It is not proper. You say you are sorry. It was not proper. It was not contumacious. Are we going to get the information?

Mr. SCALIA. Yes, sir.

Chairman PIKE. When?

Mr. SCALIA. The excerpted and edited documents which we have just been talking about are now in the process of being considered for possible assertion of executive privilege.

Chairman PIKE. What you are saying is—first you said we were going to get the documents; now you say we are not.

Mr. SCALIA. Please let me finish. I hope that that process will not have to go through to completion. In an attempt to provide a prompt resolution of this issue, and frankly with some acknowledgment that our past action on this point—though I believe well intentioned—was not correct, I am authorized to advise the committee that we will be willing to provide access to as much of this material relating to covert action approvals as the committee may request, though we retain our objections to providing a complete set of such sensitive material covering such a long period for use by the committee.

In other words, Mr. Chairman, if the committee wants to examine this material, any material that it requests to examine it may examine. Our only request is that the committee not ask that a complete set of all covert actions with names of countries and individuals over a 10-year period be delivered to the committee.

Chairman PIKE. Let me ask you a question: If the information is going to be provided, why it is being considered for executive privilege?

Mr. SCALIA. It is being considered on a document-by-document basis. Mr. Chairman, in the event the committee decides to press its point, not only to have access but to have a complete set of these documents covering 10 years of covert activity with names—

Chairman PIKE. I don't really understand what you are saying. Are you saying that all of the documents will be provided?

Mr. SCALIA. I am saying that you will be given access to any of the documents that you want to see.

Mr. DELLUMS. Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you.

You mentioned in your statement the specific reason that you did not want to provide this committee with documents covering 10 years of covert actions. We have already stipulated that we have not been requesting the names of individual persons, although we have demanded the right to know countries and the amount of money.

That is an assertion that we think we can substantiate.

Now, you have indicated the reason why you didn't want to give us these documents was because it would place all these documents in one place which, based on an evaluation by your staff, constituted a major security risk.

I object to that, and I challenge it, and I will tell you why.

First, we have made an agreement with the President. I was not party to it, but the majority of this committee agreed that there would be a mechanism by which information would be declassified in the event this committee saw fit to declassify information, and which also would provide the President with ultimate veto powers in this area. That is a fact.

For you to sit here and assert a theory of "security risk" is a challenge to the integrity of this committee and, as one member, I would like you to explain that.

Mr. SCALIA. I didn't mean it that way, Mr. Dellums. I really did not.

It is the case that within NSC—and this is, by the way, another excuse for the kind of compliance you got on this subpoena—there is only one man who has access to these documents. Now, that can be considered a criticism of the security of NSC. But that is the way terribly secret materials have to be handled, and that is the extent of the secrecy which we think these materials deserve.

Chairman PIKE. Is that man the President?

Mr. SCALIA. No, sir. I said one man within NSC. I am sure the President can get them if he wants.

Chairman PIKE. I am glad.

Mr. SCALIA. I am referring to the NSC staff, Mr. Chairman, that is all I mean. The NSC staff does not have access to this information except one staff member.

Chairman PIKE. Who is the man—or is it a woman?

Mr. SCALIA. It is a man. It is Mr. Ratliff, as I understand it.

Chairman PIKE. That is really nice to know.

Mr. DELLUMS. Then you have established the fact that one person in your operation, or in NSC, has access to all these documents, and you believe there is an absolute justification for that on the basis of the extraordinary sensitivity of the documents.

Now, let's set that aside. How does that in any way address the issue of Congress right to gather information?

Mr. SCALIA. I am not speaking to the right at this point, Mr. Dellums.

Mr. DELLUMS. We are asserting a right and you are asserting some reasons why you cannot comply.

Mr. SCALIA. I am saying we both have interests involved here, and I hope we can work it out so they can be accommodated. If you have access to the information you want, that is what you are most interested in. If we don't let these documents float about the place, that is something that we are very much interested in.

Mr. DELLUMS. Mr. Chairman, I am not finished if my 5 minutes are not up.

Chairman PIKE. We are not operating under the 5-minute rule. Once again, we obviously have been stopped by a last-minute White House operation here, and we are not going to have any hearing this morning. You still have the floor.

Mr. DELLUMS. That is the precise point I am trying to address. Your stipulation or your characterization of "floating about."

No. 1, we have passed security provisions in this committee; we have appropriate places for these documents to be stored; and there are 13 Members of Congress with varying ideological positions. But at least at this particular point, I do not believe you have the right to challenge the integrity of this committee. To assume the documents are "floating around" someplace is absurd, and I would like you to deal with the reality that this committee has assumed professionally and completely its business. We have not been about the business of leaking any materials, and no one can state that.

How can you say these documents would be "floating around" someplace?

Mr. SCALIA. I withdraw "floating around." I should not have put it that way. My point stands, however, that we want the minimum possible circulation of this material, even in very secure places.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Mr. Chairman, let me say this: I believe fully that the executive branch has the authority and the responsibility to maintain and operate an intelligence agency and capability, and to guard closely those secrets which are involved in connection with that operation. I feel that the offer that the gentleman is making, or which I assume is being made, to make available information—to permit the committee to have access to information—fully enables the committee to do its job.

We are not here to demand obedience or subservience of the executive branch to our subpoenas or our demands. We are here for the purpose of determining in what manner the intelligence community is operated by the executive branch; what defects there are in it; what improvements need to be made, and that sort of thing.

I would not want to sit here and say there have been no leaks of sensitive information. I think there have been egregious leaks of information, and they have been damaging. I don't want them to recur, and I don't want to even take the chance of their recurring.

As a member of this committee, I don't want to personally look at this information about which we are talking, but I do want the information to be accessible to our staff—to selected members of our staff—so that the information which the committee must get, the conclusions we must arrive at at some time, are made possible.

I certainly don't want to hold that this subpoena has to be complied with by the physical, undeleted, unexcised delivery of these documents. That was never intended as far as my action on this committee was concerned.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman.

Let me try to get away from that issue and back to the issue about which we are talking, which is what information is available and on what kind of a basis.

You are proposing that we have access to the information, but the information is not to be sent over to the committee office; is that your point?

Mr. SCALIA. Yes, sir.

Mr. ASPIN. When you talk about all of those pieces of paper in one stack—regarding all of the covert operations—would that be available to read over in the executive department? If one member of the committee were to take an afternoon and go over there, is that what you are offering?

Mr. SCALIA. I don't know the physics of it, Congressman.

Mr. ASPIN. Someone is nodding his head.

We would like to know exactly what it is you are suggesting.

Mr. SCALIA. I don't want to be mistaken. I am not offering at this point—nor am I offering at all—to show you the full minutes of NSC meetings; but the entire portions of the minutes relating to the approval of covert actions will be available to the members of the committee who want to go and look at them.

Mr. ASPIN. In other words, the subject covered by the subpoena?

Mr. SCALIA. Yes, sir, and there would not be deletions.

Mr. ASPIN. There would not be deletions; it would all be together in one pile—that very pile you would be afraid to put in the committee office—but we could go over there and look at it; is that correct?

Mr. SCALIA. Yes, sir. We would prefer it if you would request the specific ones that you want, but if you want all of them——

Mr. ASPIN. If we wanted all of them, they are there, and the pile is there to read; is that what you are saying?

Mr. SCALIA. Yes, sir.

Mr. ASPIN. What were you saying about executive privilege? Go through that again, please.

Mr. SCALIA. What I was saying, Congressman, is that there is in process of consideration whether executive privilege should be asserted with respect to these documents if the committee insists upon receiving them physically.

As I say, I hope we never have to reach that point. I don't think executive privilege should have to be asserted. There ought to be a way we can both accommodate our interests, and my proposal—the proposal I have been authorized to suggest—I think would enable that. It would give you what you want and it would save us from worrying about the assertion of executive privilege.

Chairman PIKE. Mr. Aspin, I think your point is fundamental.

I want to make one thing clear. Mr. Scalia, you are not talking about summaries of documents. You are not talking about excerpts or amalgamations of documents. You are talking about documents.

Mr. SCALIA. I think we mean the same thing. I am certainly not talking about summaries. I am only talking about excerpts to the extent that your subpoena did not ask for all the minutes; it asked for those portions of the minutes relating to covert action approvals and those full portions will be provided.

Chairman PIKE. I think the committee——

Mr. SCALIA. Mr. Chairman, it is a lot different from what you got.

Chairman PIKE. You mean they are not empty pages?

Mr. SCALIA. I am not talking about amputated portions.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Mr. Scalia, the use of executive privilege that you are talking about sounds as if you want to use it to assert security over the documents. For example, as I understand it—correct me if I am wrong, because this is very important—you are saying that you will give us access; that you don't want to send it down to the committee in a job lot; but the minutes will be made available. Then you begin to discuss executive privilege, to be used if the committee insists on its right to take physical possession of the documents.

That is where you use executive privilege.

Mr. SCALIA. I didn't say "right," Congressman. I said if the committee insists.

Mr. HAYES. Insists upon pressing their point of view that they deserve physical custody. Then you will assert executive privilege, but you will waive it insofar as our——

Mr. SCALIA. I didn't say we would. I said we would be constrained to consider whether we would have to deny that committee request.

Mr. HAYES. Would you do that on a document-by-document basis, as access is requested? In other words, if Mr. Aspin wanted to go down on an expedition and take a look at everything——

Mr. SCALIA. No. No executive privilege will be asserted on this access point. I am saying we will not assert executive privilege with respect to any document you want to go to look at. All I am saying

is, I think that is the furthest we can go and say categorically we won't assert executive privilege. If you want to go beyond that and get the actual documents, I think we have to consider whether we must assert executive privilege. I think that is a much more serious matter.

Mr. DELLUMS. Let me follow up on this for just a moment, if I can understand the difference. You indicated you feel that because of the sensitive nature of these documents, you do not want to place 10 years worth of documents relating to covert activity in one place.

However, you would provide access to any and all members of this committee, plus appropriate staff, to look at these documents. Is that correct?

Mr. SCALIA. I believe it includes appropriate staff, Congressman. I will correct it if that is not so.

Mr. DELLUMS. I won't press that further.

Here is my point: The only difference between what we are asking and what you are asserting is the physical custody of the documents, because—following on the statement of Mr. McClory—it is possible that a member could leak the material if we went over and read the material, or a staff person could do that.

Mr. SCALIA. Yes, sir.

Mr. DELLUMS. So the only particular reason then, it would seem to me, is that you think that maybe somebody might steal the documents if they are over here. There is no other rhyme nor reason for it.

Mr. SCALIA. I think it demonstrates that we don't mistrust you at all; it is just your safes. We would rather have them where we can look after them. We are not worried about your seeing them. We are worried about—

Chairman PIKE. Now, this has just degenerated. You don't mistrust us; you mistrust our safes. OK.

Mr. DELLUMS. Can we get an answer, Mr. Chairman?

Chairman PIKE. I think we are in this position: I think we have gained a little ground today. I think whether or not we will gain any additional ground remains to be seen. I have heard these allegations of cooperation in the past; but, when implementation was attempted, it did not work out quite that way. I can only suggest if we continue with this morning's session in the manner in which we had started this morning's session, nothing would happen to inhibit the further dialog between our staff and theirs. And obviously, as we said when we voted the contempt citation, if at any time there is substantial compliance with our subpoena, there is no contempt, and there is nothing to stop us from going ahead and nothing to stop them from complying with the subpoenas in good faith and with substantial compliance.

Mr. Aspin.

Mr. ASPIN. Before we finish, I would like a little advice.

I think it is very important on the access question—on all the questions raised—that those documents be documents with full information in them. It is terribly important that the appropriate staff have access. It is terribly important that when they get down there, there isn't any kind of runaround on the issue, if this kind of compromise is going to work out. And I think it would be very appropriate not to consider executive privilege on this 40 Committee subpoena. It is coming very late in the process.

Mr. SCALIA. I say we are not, Mr. Aspin, on this access basis—

Mr. ASPIN. It looks bad. What you are saying is executive privilege applies when you send the papers over; it doesn't apply to access. It is an extraordinary doctrine that you are proposing.

In other words, it looks like you are putting a club over us: "OK, you guys agree to this access proviso and we are not going to assert executive privilege. You don't and, by God, we are going to assert executive privilege." You can't do it on a selective basis. It applies or it doesn't apply.

Don't do that. I am just giving you some advice. Don't look like you are putting a gun to a head when you are negotiating a compromise. Let's try to negotiate the compromise. Let's see whether we can work something out.

I think it is possible to get an agreement. The question about the SALT item, and the question of whether we have the documents or haven't got the documents, I guess we can resolve.

This 40 Committee subpoena can be resolved with good faith on your side.

Mr. SCALIA. I won't bring up executive privilege.

Mr. JOHNSON. Mr. Chairman, the issues this morning are kind of double-pronged. The first and most immediate issue—since this is the last scheduled meeting before the report is filed—is the one of the contempt citation of Dr. Kissinger.

With respect to the SALT and 40 Committee subpoenas, the President of the United States has told us that Dr. Kissinger was not then the Assistant to the President for National Security Affairs. I personally accept that, and I feel that under those circumstances the question of whether or not he was in contempt has been answered. Since we have to deal with that particular problem today, whether or not we will accept access is something else.

I am concerned that we then get on with the third subpoena to Mr. Kissinger, as the Secretary of State and not as assistant to the President—

Chairman PIKE. Without agreeing with you, it seems to me, as I read the letter from the President of the United States, the President said, insofar as the SALT and 40 Committee subpoenas are concerned, the principal issue was going to be substantial compliance. This morning, for the first time, we have heard there is going to be some compliance with the 40 Committee subpoena. We did not hear that as late as last night—

Mr. JOHNSON. I don't want to argue about what constitutes compliance. The point is that Dr. Kissinger, according to the President, was not the assistant, and it seems to me to be impossible to hold him in contempt when he is not the person to whom the subpoena was directed.

Chairman PIKE. I simply do not accept that we addressed the subpoena to the wrong person. That is my position, but I think that you are correct in stating that we should get on to another issue—not because the 40 Committee subpoena will be resolved on the basis of the technicality of who had the papers, but because it will be resolved, hopefully, on the basis of compliance. I hope it will be.

I would agree with you that it is time we went on to the other one. We have already shot the hearing which we had scheduled for today. I am going to tell Mr. Colby and Mr. Rogovin there is no sense in our trying to have that hearing today and we will reschedule it, hopefully,

for some time after the recess. I thank you, Mr. Rogovin, and my apologies to Mr. Colby.

Let's just get this straight now: There is no allegation of executive privilege as to the SALT subpoena or as to the 40 Committee subpoena. Is that correct?

Why don't you address yourself to the other issue, Mr. Scalia?

MR. SCALIA. There currently is none with respect to either. There will be none with respect to the SALT. We have under consideration the exercise of executive privilege with respect to the 40 Committee subpoena. That is all I can say about the 40 Committee.

Chairman PIKE. So at this point we simply don't know whether there is going to be any substantial compliance with the 40 Committee subpoena.

MR. SCALIA. No; you know for sure there will be no executive privilege on the 40 Committee subpoena to the extent of permitting access.

Chairman PIKE. You talked about access with certain elements of the minutes cut out. We subpoenaed the minutes.

MR. SCALIA. No, you didn't.

Chairman PIKE. I think we did.

MR. SCALIA. No, sir. Just certain portions; and that was made very clear in discussions with your staff.

MR. FIELD. No.

MR. Chairman, we have been very explicit from day 1 that what we want are documents similar to the ones we received on one or two covert projects.

MR. SCALIA. The full minutes might discuss eight different subjects. You are only asking about one subject in this subpoena.

MR. FIELD. I sat there last night and repeated what we want, and it was thoroughly understood by Mr. Leppert and Mr. Marsh: We want this set of papers with everything in the document—nothing deleted. There are no names of agents in any of minutes that we know of, the name of an agent has never been included in these decision minutes. The 40 Committee only deals with covert actions. They don't make decisions on transportation problems or health and welfare problems. It was covert action.

MR. SCALIA. That is right.

MR. FIELD. We want all eight items.

MR. SCALIA. What if they disapproved four, Mr. Field? You asked for approvals of covert action. Do the words in the subpoenas that you deliver mean nothing?

MR. FIELD. There are two chunks of paper that are missing which are the disapproval sections of these minutes. It has never been asserted that there were disapprovals. If there were, we would consider them, too.

Chairman PIKE. Let me say this: I am delighted to hear that they ever disapprove anything, I really am. This is the first time I have ever heard that asserted. I think it would be very useful—not only to our committee, but to the whole concept of our intelligence operations—to know that once in a while they disapproved something. You may well be correct that technically we did not ask for those which were disapproved. I don't have that language right in front of me, but it would seem to me that just as a matter of showing the reality of the fact and

the perspective of the operation, it would be very useful for you to provide and for us to have disapprovals of proposed operations.

Mr. McCLORY. The proposal which appears to be made here this morning is a proposal which is very similar to one which I heard before we ever got into the subject of contempt and I talked with the staff director and with Mr. Donner and Mr. Boos. It seemed to me that if this arrangement for accessibility were provided there would be a disposition to say, well, this is substantial compliance with the subpoenas.

The problem is, as my colleague from Wisconsin, Mr. Aspin, says, when the designated staff person goes down to get the information, they don't get the same kind of reception as I get on the telephone or I get in other conversations. It is extremely important—and I want to emphasize this and I want to concur with what Mr. Aspin says—that you do provide the kind of cooperation, when the staff personnel get there, that you are offering here in this hearing this morning and which has been offered to me on other occasions.

I think we can avoid a confrontation which is bound to develop unless we get that kind of support.

I want to urge you, as the counsel representing the agencies here this morning, to urge their full cooperation in response to this offer. I think then we will get over this hurdle, as we have some of the others.

Chairman PIKE. Let's go ahead with the one on which executive privilege by Presidents living and dead has been asserted.

Mr. SCALIA. Mr. Chairman, that subpoena as to which executive privilege has been asserted was addressed to Henry A. Kissinger, Secretary of State, and it was accepted on his behalf. If one were to attempt a description of documents which would have the highest possible claim to an assertion of executive privilege, one could only with difficulty surpass the description contained in the subpoena. It asks for recommendations made to one of the closest circles of Presidential advisers—namely, the National Security Council and the 40 Committee, or its predecessors—on matters of the most sensitive nature relating to foreign and military affairs—namely, covert action.

[COMMITTEE NOTE.—The subpoena referred to is printed on pp. 1491–1492 of the appendixes.]

Not surprisingly, all of the documents originally identified as responsive to this subpoena were found by the State Department to warrant consideration for the assertion of executive privilege. On November 10—the day before the return date—the Department informed your staff director by telephone and later the same day by letter that, as they were being identified, these materials were being brought to the attention of the appropriate office in the White House and that “the final decision on their release to the committee will have to be taken in the White House.”

On November 13, the day before your committee took its action on this resolution, Mr. Buchen, Counsel to the President, wrote Chairman Pike advising him that the documents were being reviewed “prior to a decision by the President, concerning whether or not they should be made available to the committee.”

[The November 13, 1975, letter from Mr. Buchen, the November 10 letter from Mr. Hyland to which Mr. Buchen's letter and related correspondence are printed on pp. 1496-1497 of the appendixes.]

Chairman PIKE. We are familiar with all of these facts.

Mr. SCALIA. I think the facts are important, Mr. Chairman.

Chairman PIKE. We are familiar with the facts. All you are doing is using up our time. We know the facts. Why don't you get to your legal position?

Mr. SCALIA. This is part of my legal position, Mr. Chairman—the fact that the President was not afforded the time to assert executive privilege with respect to these documents, despite the fact that it was requested.

Chairman PIKE. Oh, come on. You are telling us today you still haven't made up your mind whether you are going to assert executive privilege on something else.

Mr. SCALIA. Mr. Chairman, we are asserting it document-by-document, rather than on a categorical basis. It would be very easy for the President to say, "I will not answer the subpoena," period. He did not do it that way, but considered each document.

Chairman PIKE. You told us a minute ago we are going to get all the 40 Committee documents on covert actions, or access to all documents. Wouldn't that include the recommendations we are now talking about.

Mr. SCALIA. No, not necessarily. They are talking about actions of the committee approving covert actions.

Chairman PIKE. Do you mean the minutes of the 40 Committee would not contain the recommendations of the State Department for covert action?

Mr. SCALIA. They would, but I don't believe the subpoena called for the full minutes of every committee meeting that approved a covert action.

Chairman PIKE. I believe it did.

Mr. SCALIA. We can read it, Mr. Chairman.

Chairman PIKE. The minute of the decision.

Mr. SCALIA. I can also quote his description of it. This is Mr. Field himself.

Chairman PIKE. Come on. Go back to the subpoena.

Mr. SCALIA. " * * * That was not all minutes of every meeting in the sense of verbatim minutes, but a minute, in a word-of-art sense—a one or two-paragraph statement, usually, indicating the approval of a covert action project by the National Security Council and the 40 Committee. * * * "

Chairman PIKE. That statement would include who recommended it; would it not?

Mr. SCALIA. He doesn't say it would, and I don't know why it would.

Chairman PIKE. What you are telling us now as to the 40 Committee minutes is that the documents we are going to get, which you are alleging are in substantial compliance, will not include who recommended these events.

Mr. SCALIA. Sir, I am not saying that.

It is very hard to précis it until we see what it is. I think an accommodation can be reached on that.

Chairman PIKE. We have been trying to see what it is for months.

Mr. SCALIA. I am saying categorically it won't include the entire minutes of every meeting that approved any single covert action project. That was not my understanding of what the subpoena asked for. Nor was it Mr. Field's. We cannot possibly deal with the committee if the understandings keep changing. I think the subpoena on its face is clear on this point, and I think Mr. Field's description of it is clear.

Chairman PIKE. I agree with you. We cannot deal with each other if the understandings keep changing. You come in here this morning with a brand new proposal and a brand new recommendation and we keep finding that the understandings do keep changing.

Mr. DELLUMS. I think the Chair has a very good point. We know that certain covert action programs are recommended by the CIA. We also know that some projects are recommended by the State Department. They come through different channels. All right. Then they come to the 40 Committee. The point that the Chair is making is, if we ask for all the minutes approving covert operations by the 40 Committee, would that not also then include the CIA-initiated projects as well as the State Department-initiated projects? If that is correct, then it would seem to me that those minutes would reflect "initiated by CIA," or "initiated by State."

Mr. Funk shakes his head no. Does that mean a project comes to the 40 Committee and the minutes don't indicate who initiated it? It is just a project floated up from some place? That doesn't make sense to me and you can't make me believe that.

If the project reflects that it was initiated by the CIA, or the project indicates it was initiated by the State Department, would we not then have access to that same information if you complied with the 40 Committee subpoena? On the one hand you are saying that on the subpoena regarding the eight or more projects initiated by the State Department, you invoke executive privilege; but you will give us access to the 40 Committee minutes, which any reasonable person would assume would also include the minutes approving projects initiated by the State Department.

Mr. SCALIA. I understand your point, Mr. Dellums. What is wrong about it is we have already provided you, as I understand, the information about what projects were initiated by whom. What the subpoena to which executive privilege has been asserted would provide you is not just where it is initiated, but the particular individual who initiated it, his arguments pro and con, his advice to the President, his recommendations to the President, the alternatives he proposes—the very innermost portion of the consultative process within the executive branch.

Mr. DELLUMS. Wouldn't that be discussed in the 40 Committee proceedings? Would not those matters be factors taken into consideration in making a determination as to whether there is efficacy in the approval or disapproval of a project?

Mr. SCALIA. Yes, sir; but that discussion would not come within the portion of the minutes that could properly be described as committee "records of decisions taken since January 20, 1965, reflecting approvals."

Mr. DELLUMS. Mr. Chairman, I have great difficulty following this. If these factors are included in the decision, but are excluded from the minutes, how do you justify that?

Chairman PIKE. Mr. Dellums, you are supposed to have great difficulty in following it.

Mr. McCLORY. Would the gentleman yield to me?

Chairman PIKE. Mr. McClory.

Mr. McCLORY. The point is, Mr. Chairman, what we are trying to find out is whether or not all covert activities are authorized and approved by the 40 Committee. The information with regard to State Department recommendations would disclose whether the State Department recommendations did go through the 40 Committee, or did not go through the 40 Committee. If they did, we would have a duplication of information; but if there is a discrepancy, then that would be of interest to us.

I think one of the important things for us to determine is whether covert activities—which may cost lots of money and may involve lots of risks—are carried out in a systematic, regular, orderly way, as contemplated by the legislation and by executive direction; or whether there is instead a kind of irregularity that is followed and, if there is, we ought to report on that and we ought to see to it that in the future there is no such irregularity.

Mr. SCALIA. Mr. McClory, I think there is a real misunderstanding on this. The subpoena we are talking about now does not simply ask what covert action did the State Department initiate. It asks for all documents reflecting State Department initiations.

Mr. McCLORY. Recommendations.

Mr. SCALIA. Right. Recommendations. They are the lengthy documents containing discussions by Ambassadors and members of the 40 Committee concerning their thinking process, and their recommendations to the President. That goes much beyond whether it originated with the State Department. If you want to know that, we can provide that.

Chairman PIKE. We keep referring to recommendations to the President, and I know that this is done intentionally; but the subpoena asked for recommendations to the National Security Council. It did not mention recommendations to the President.

The words "recommendation to the President" were nowhere in the subpoena.

The language was "recommending covert action made to the National Security Council," which is what the statute requires. I know why you keep referring to recommendations to the President: You have to do that in order to bring it into the scope of executive privilege.

Mr. SCALIA. I don't think that is right at all, Mr. Chairman.

Mr. McCLORY. We want to determine whether or not covert operations do in all instances go through the 40 Committee or whether some are carried out on the recommendation of the State Department, without the 40 Committee actually meeting and providing its formal approval. That is the question, and we need a lot of information to come to a conclusion on it.

Mr. TREEN. I don't know how receiving the recommendations of the Secretary of State is going to answer the question of whether or not covert action was taken on his recommendation alone. That is not going to answer your question.

I quite agree: The decisionmaking process begins sometime after the recommendation is made, and I think we have two distinctly different

areas here—the recommendation and the decision. I can understand that.

This subpoena calls for the records of decisions. That would not necessarily include recommendations made by the Secretary of State—or you or me or anybody else—for covert action.

Chairman PIKE. Mr. Hayes, are you still seeking recognition?

Mr. HAYES. Mr. Chairman, you made my point.

Chairman PIKE. Are you, sir, about finished?

Mr. SCALIA. I thought I had just started on the third subpoena.

Chairman PIKE. I will say this: Regardless of the outcome of today's meeting, I think you can go back to those who sent you and say you did indeed accomplish your purpose—you stopped the committee for 1 more day.

Mr. SCALIA. That was not my purpose, Mr. Chairman.

Chairman PIKE. Go ahead.

Mr. SCALIA. It is a serious matter you are considering, and I think it is worth a couple of hours before you cite a Secretary of State for contempt for the first time in the history of the country.

Chairman PIKE. That in fact has already been done by the committee. What you are asking us to do is turn around and undo it.

I would agree with you that it is indeed a serious matter and I think that when you say it is serious and I say it is serious, it is strange that the Secretary of State prefers to think of it as frivolous.

Mr. SCALIA. I would like to discuss some of the legal issues involved. I don't want to get into a full-blown discussion of the doctrine of executive privilege—the right to withhold certain documents from congressional inquiry that has been asserted by Presidents since George Washington and acknowledged in a recent case by the Supreme Court. It has most frequently been exercised with respect to military or foreign affairs secrets and with respect to confidential advice to the President or his closest advisers. Obviously, all of these elements are combined in the present case. In my view, there is no question that the subject matter is appropriate for an assertion of executive privilege, and this was the advice given to the President by the Attorney General.

I understand that some members of the committee entertain doubts concerning the availability of a claim of executive privilege in the present case, because the documents in question were not addressed to the present President or his advisers, but rather to the President and advisers of earlier administrations. I confess, Mr. Chairman, that this is an entirely new asserted limitation upon the doctrine which I have never heard before, although I have done some considerable study in the field.

On its face, of course, it does not make much sense. Why does a fact which is a sensitive military or foreign affairs secret on January 19 suddenly become nonsecret on January 20, when a new President is sworn in? It makes no sense whatever to say that his predecessor could protect it from congressional inquiry but he cannot. Similarly, with that aspect of executive privilege which protects confidential advice giving. The purpose of this protection is to enable advice giving to be frank and forthright. It is hardly conducive to these values to maintain that advice can be protected only up to the date when a particular

President leaves office, and that once he is gone the most unguarded statements of his advisers cannot be protected.

A look at the historic record discloses what one would expect: that no such limitation upon the privilege has been observed. The following instances should suffice. In 1846 President Polk refused a request of the House of Representatives to furnish it "an account of all payments made on the President's certificates * * * from the 4th day of March 1841, until the retirement of Daniel Webster from the Department of State," a period which included the Presidency of President Harrison and a part of the Presidency of President Tyler. During the investigation of the attack on Pearl Harbor by a joint congressional committee in 1945, President Truman reserved the right to claim privilege in certain areas, and the committee's minority report indicates that there were some limitations on the access to information. Of course, President Truman was not President at the time of the attack on Pearl Harbor. During the investigation by the Senate Committee on Armed Services of the Military Cold War Education and Speech Review Policies, which covered practices during the Eisenhower and Kennedy administrations, President Kennedy prohibited the disclosure of information not limited to acts which had occurred during his own tenure.

I understand that another reservation concerning the availability of executive privilege in this case, voiced by some members of the committee, pertains to a supposed requirement that the privilege must not only be asserted by the President, but must be communicated by him directly to the committee involved. This is again a limitation I confess I have never heard of. It would indeed seem strange that although the Congress may delegate not merely the communication of a demand, but even the assertion of a demand to one of its committees; and although that committee may serve the demand upon one of the President's subordinates, rather than upon the President himself, nevertheless the President must both personally decide upon the response of privilege and must personally convey it to the requesting committee.

There is again nothing in the historical record which would support such a requirement. The normal form of the claim of privilege is a letter from the President instructing a department head not to disclose certain information, with communication of the prohibition to the congressional committee involved, which is what happened here. For example, President Eisenhower's claim of privilege during the Army-McCarthy investigation took the form of a letter to the Secretary of Defense, not to the McCarthy committee. During the Senate investigation of Military Cold War Education and Speech Review Policies, President Kennedy's claim of privilege took the form of letters addressed to the Secretaries of Defense and State. There have been, of course, instances where Presidents have communicated directly with committees, especially where requests were directly addressed to the President. The examples set forth above, however, indicate that this procedure is not a requirement. Finally, I may note that the assertion of executive privilege against the judicial branch—which is another facet of the same doctrine—has been sanctioned by the Supreme Court when made by Cabinet secretaries without even evidence of specific Presidential consideration of the particular assertion, much less direct Presidential communication.

The simplicity of the executive privilege issue in the present case is marred by the fact that the final assertion was not made to the committee until the day of—probably after the hour of—the original contempt vote. In the present circumstances, however, I think this is inconsequential. Surely the Presidential power to assert the privilege carries with it the Presidential ability to take a reasonable period of time to consider its assertion. The 4 days—2 business days—accorded to find the documents, identify the privileged material, obtain expert advice concerning the privilege and, as the President desired, to devote the President's own attention to the matter, was on its face insufficient. And the record shows the refusal of this committee to provide a reasonable period of grace.

In my view it is clear that the assertion in the present instance was both timely and proper. Even if it should be assumed, moreover, that the assertion of the privilege was improper, there still remains the issue of whether Secretary Kissinger could properly be held to be contumacious of the Congress for having obeyed the President's instruction on the matter. At least where the claim of privilege is colorable, I think that highly unlikely. The Secretary, after all, is a subordinate of the President, and must be permitted to follow apparently lawful instructions unless the executive branch is to become a house divided.

Indeed, it may be of questionable constitutionality to subject an executive branch officer in a manner such as this to the unavoidable risk of criminal liability for obeying an apparently lawful directive of the President.

I wish to make one final point, Mr. Chairman, which is in a sense quite technical and yet at bottom reflects basic considerations of fairness. I have been seeking this morning to induce this committee to reconsider an action it has already taken—a task which, as any lawyer knows, is an uphill struggle. It is to my knowledge the invariable practice of congressional committees, and indeed a practice that may be required by due process, to provide an opportunity to explain and to make a final categorical refusal before a citation of contempt is voted. This privilege was not accorded in the present case. I believe that if the executive branch had had the opportunity before your action was initially taken to provide the explanation for apparent noncompliance, and the reasons for the areas of genuine noncompliance, which existed in the present case, you might have been disposed to reach a different result. Since we did not have that opportunity, I hope you will not merely reconsider the matter, but will consider it anew, without the inertia that a decision, once taken, normally provides.

In the one area covered by the State Department subpoena, I hope the committee will see that the spirit of mutual accommodation, which must enliven our system of Government, counsels this committee not to press for the production of material so close to the heart of the executive process—just as in many other areas during this inquiry (the SALT subpoena being one of them) the President has declined to make any assertion of executive privilege, though it might well have been available. As to the other areas covered by these three subpoenas, we have, I believe, made entire compliance with respect to the SALT documents and are willing to discuss reasonable alternatives with respect to the 40 Committee subpoena. I am confident these matters can

be worked out. I believe that the actions which the executive branch officials have taken up until this time have not been meant to be contumacious of the role or the functions of this committee, and I am hopeful that you will see that it would harm rather than benefit the Nation to proceed with the present resolution.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. I have two questions: Could we agree that where we are talking about abuse, wrongdoing or illegal acts, you should not exert executive privilege so as to hide any acts that would fall in the category of abuse of Government power, wrongdoing or illegal acts?

Mr. SCALIA. I think President Ford has said he would not assert executive privilege to hide any wrongdoing, and that is one of the reasons we have not asserted it with respect to SALT. The committee expressed the view it was seeking to look into possible wrongdoing, so we have not chosen to assert it.

Mr. DELLUMS. My follow-on questions are these:

Suppose the committee has information in its possession, as a result of investigations and testimony, regarding certain covert operations initiated by the State Department which called into question their legality by virtue of the fact that they may not have been conducted within the prescribed manner laid down by certain laws. This committee would then be asserting either an abuse of power, wrongdoing, or outright illegal acts. How do you then assert executive privilege where we, on the one hand, are looking at the potential or the possibility of wrongdoing? Because, as Mr. McClory said, for example, we are looking at the question of whether certain covert operations were approved outside of the manner prescribed by law in the document that gave rise to the intelligence agencies. I haven't the document before me but it says "from time to time" certain projects shall be approved.

We feel some projects may very well have been approved outside of that legal mechanism. So if we are asserting wrongdoing, how can you, on the other hand, assert executive privilege when the President is saying, "I will not assert executive privilege to hide wrongdoing"?

Mr. SCALIA. Mr. Congressman, I don't really see how this particular subpoena ties in with that. All this will get you is the State Department's recommendations. It won't show you what was approved and what wasn't approved.

Mr. DELLUMS. We can check that when we get the information regarding the 40 Committee, so we do have a followup procedure.

Mr. SCALIA. It is my understanding you already know what actions were proposed, and by what agency. If it is just a matter of knowing whether a particular action originated in one place or another, you don't need the full recommendation memorandum from an ambassador to the committee, or to the President, in order to obtain that.

Mr. DELLUMS. Let's use a hypothetical situation, where covert actions could possibly and conceivably have been approved outside the 40 Committee—with the involvement of an ambassador, of the Secretary of State, of the President, but not of the 40 Committee, as prescribed by law. Now, we would perceive that as wrongdoing or illegal acts or abuse of power. How can you then assert executive privilege to put a cloak over the necessary documentation we need to determine whether or not you have in fact engaged in wrongdoing, illegal acts, or abuse of Government powers? You know, we have documentation of infor-

mation that certain projects have been approved outside of the 40 Committee process, and there we are alleging illegal action and impropriety.

Mr. SCALIA. I don't see how this subpoena gets you anything like that. All this shows is what the Department—the State Department—recommended to the 40 Committee.

Mr. DELLUMS. It will give us the thinking process; it will give us the information that led to a covert operation being approved and funded, using Government moneys to carry out certain acts in certain places in the world—

Mr. SCALIA. Through the 40 Committee. You have only requested those recommendations from the State Department to the 40 Committee or the NSC. I don't see how that can show you projects that didn't go through the 40 Committee or the NSC. That is why we don't see the connection with any seeking after wrongdoing in the case of this subpoena.

Mr. DELLUMS. We would like to know how the projects got started and what the rationale for the process is. We have testimony on certain projects that at best are dubious and are at worst outright illegal, a sham, and a tragedy.

Mr. SCALIA. Stupidity is still not unlawful.

Mr. DELLUMS. We have a right to look at that blatant stupidity in the use of funds, in the involvement of activity in other countries—

Chairman PIKE. Mr. Dellums, I am just going to caution you that this is an open session, and I think maybe you have gone as far as you ought to go on this particular point.

Mr. DELLUMS. I appreciate that. I have been walking very delicately.

Chairman PIKE. I know you have. Draw back.

Mr. DELLUMS. My final question: Was executive privilege asserted after the fact? In other words, are you asserting executive privilege—in all candor—to cover the Secretary, or is the assertion of executive privilege being taken very seriously—in terms of this information being so sensitive that this committee cannot have access to it?

Mr. SCALIA. No, sir, Mr. Dellums. I was asked earlier—I think Mr. Giaimo asked me—whether I was involved at all in these things, and I said there are only relatively narrow aspects of it I have been involved in. The assertion or nonassertion of executive privilege has been one area.

I can state of my own knowledge that by the time compliance with this subpoena was required, there was under active consideration the issue of whether it was proper to assert executive privilege. It isn't an afterthought; it is just as Mr. Buchen's letter to the committee reflected; it is that the executive branch wanted time to be able to make an intelligent decision—a decision that I am sure you gentlemen do not want the President to take lightly—about whether or not to assert executive privilege. It was in no way an afterthought, and the truth is that we needed more time to decide because the President was not about to jump to an unreasonable assertion of executive privilege.

I thought it was in the Congress' interest as well as the President's to have this time. He was not provided it.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. I would like to address myself to the comments in the President's letter, specifically that Secretary Kissinger had no responsibility for responding to these subpoenas nor for supervising the re-

sponse to them: "After November 3, he was no longer my Assistant for National Security Affairs, and he was neither named in the subpoenas, nor were they served upon him. Thus there is no basis for the resolutions addressed to Secretary Kissinger on these subpoenas." That is also the thrust of part of your comments.

Has Dr. Kissinger submitted his formal resignation?

Mr. SCALIA. If by a formal one you mean a written one, I believe the answer is no.

Mr. KASTEN. Has Dr. Kissinger submitted any kind of a formal resignation?

Mr. SCALIA. As is evidenced from the President's letter, Dr. Kissinger has resigned. It is not necessary that the resignation be in writing, and the tenor of the President's letter is that, yes, there has been a formal resignation. I don't know what one means by "formal."

Mr. KASTEN. Has General Scowcroft been sworn in as Assistant to the President for National Security Affairs?

Mr. SCALIA. No, sir, I do not believe he has.

Mr. KASTEN. Can a military general, General Scowcroft, legally act as assistant to the President, or even carry out the functions of that office, without resigning his military commission?

Mr. SCALIA. There are legal problems involved, Mr. Kasten. Frankly, I don't think that the answer is entirely clear, but there are legal questions raised.

Mr. KASTEN. So you wouldn't be able to assume, necessarily, that at the present time General Scowcroft could be legally acting as the President's assistant—

Mr. SCALIA. Now you raise a further question—whether, assuming it would be unlawful for him to be assistant, it would be unlawful for him to be acting assistant. I am not sure there is any such thing as an acting assistant. In fact, there is no such statutory thing as an Assistant to the President for National Security Affairs.

Mr. KASTEN. It is my information he is still signing the mail as deputy.

Let's forget about the law for a minute.

Does Dr. Kissinger still brief the President in the morning on National Security Council matters, as the White House staff has told our staff?

Mr. SCALIA. I don't know.

Mr. KASTEN. Is there anyone at the table who could answer that question? Is Dr. Kissinger presently participating in the morning briefings with the President on these matters?

Mr. SCALIA. I am not sure that anyone here knows.

Mr. KASTEN. You don't know the answer to that?

Mr. SCALIA. I do not know and wouldn't know.

Mr. KASTEN. It is my understanding from the information received from the staff that he in fact continues to participate in these morning briefings.

Mr. SCALIA. I don't understand the significance of that. Is this an exclusive function of the Assistant to the President for National Security Affairs?

Mr. KASTEN. It is one of the functions that Dr. Kissinger was carrying out in his role as Assistant to the President for National Security Affairs.

Mr. SCALIA. Or perhaps as the Secretary of State. It is hard to tell.

Mr. KASTEN. My question was on National Security Council matters.

Has Dr. Kissinger carried out any duties since November 3 with respect to the National Security Council subcommittee he chairs?

Mr. SCALIA. I think the answer is "No." I think that is stated in the President's letter. The only reason I say it is no is because it is stated in the President's letter. I do not know. The President said not.

Mr. KASTEN. Do you specifically know that? We again have information contrary to that.

Mr. SCALIA. No, sir. As I say, I don't know, and would not normally know.

Mr. KASTEN. Has Dr. Kissinger resigned from those chairmanships which he held—chairmanships of subcommittees and committees on the National Security Council? Has he formally resigned from the chairmanships of these committees and subcommittees as his predecessors had formerly resigned from the chairmanships of these subcommittees?

Mr. SCALIA. Did his predecessors remain Secretary of State? You understand, the Secretary of State is a member of the National Security Council.

Mr. KASTEN. I am talking about the committees and subcommittees of the National Security Council which he chaired as the President's adviser on national security affairs. I am sure the gentlemen on your left or right know what chairmanships I am talking about.

Mr. SCALIA. He was telling me the lady on his right knows.

Mrs. DAVIS. There has been only one meeting of an NSC subgroup since November 3, and General Scowcroft chaired that meeting.

Mr. KASTEN. Has Dr. Kissinger formally resigned his chairmanship of those subcommittees?

Mrs. DAVIS. I do not know that he has formally resigned them. However, the chairmen of those subgroups are designated as assistant to the President and there has been only one meeting and that was chaired by the general.

Mr. KASTEN. Has he conducted any other business, such as signing mail, attending briefings or whatever, in the role of the chairman of one of these subcommittees?

Mrs. DAVIS. The last document that he signed as assistant to the President—which he initialed as assistant to the President—was on November 1. He has not initialed or signed any other document to my knowledge as assistant to the President since that time.

Mr. KASTEN. How about as chairman of the subcommittees? The same statement?

Mrs. DAVIS. No, sir.

Mr. KASTEN. The President of the United States has told us that this is the guy. Now, my question to you, representing the administration, is, to whom should these subpoenas be properly addressed?

Mr. SCALIA. Well, I don't think it matters whom you address them to, so long as you cite the person you address them to, if you are going to cite somebody for contempt. That is the only point we are here to make, really.

Mr. KASTEN. I am not an attorney, but we have a form here that has a blank in it. What name should be in the blank in which we had written "Henry A. Kissinger, Assistant to the President for National Security Affairs." What name should be put there?

Mr. SCALIA. The name was not there in the two subpoenas we are talking about, Mr. Kasten, you must realize that. That is part of the problem. You simply said "Assistant to the President" and your meeting indicated that is who you meant; you didn't care whom it happened to be.

Mr. KASTEN. But you care very much who it is, and the President obviously does also.

Chairman PIKE. Is it fair to say the Assistant to the President for National Security Affairs at the time the subpoena was served was either Henry A. Kissinger or the job was vacant?

Mr. SCALIA. Yes; I think that is the situation. But the subpoena allowed service on other people as well and the point is that other type of service was what was attempted.

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. JOHNSON. Mr. Scalia, you have raised the doctrine of executive privilege to a new and exalted level. I think you understand that. There is no legal basis, no court decision, on which to raise this kind of claim.

I find that totally unacceptable as an American citizen—not just as a Member of Congress, but as an American citizen. The idea that a President can, in effect, have censorship power over everything that occurred back to the time of George Washington is to me totally unacceptable.

If we as a committee accept that, and you continue to assert the privilege, you haven't offered us any means of resolving it or litigating it, outside of the contempt process. If you would make any kind of an offer as to a means of getting this settled in the courts—but I can't find this is an acceptable procedure, or acceptable claim—if you will offer us some means of doing this outside of the contempt process, I would personally be glad to consider it. But I am not willing to let it drop at this point and say, "OK, the doctrine of executive privilege, as you claim it, applies."

We are talking about the one directed to Dr. Kissinger as Secretary of State.

Mr. SCALIA. Mr. Johnson, you know in 200 years—the reason I can't cite a decision is not because the doctrine hasn't been used, but because it has been used intelligently. There is good reason why the matter hasn't been decided by the courts. It hasn't gotten to the courts because the two other branches of Government have been farsighted enough to work it out between them.

There is another reason it hasn't come to the courts, and that is because the courts are not the place to decide it. It is not a rigid doctrine—so that you can exercise executive privilege as to this and you cannot as to the other. It depends on many variables, and variables not justiciable by a court. For example, some of the broadest assertions of executive privilege in history were made with respect to the McCarthy hearings, when the President just forbade any employee of the Department of Defense to appear. In ordinary circumstances, I would say that is not an appropriate manner of exercising executive privilege. In that circumstance, I think it was all right. But I don't know how a court could write an opinion to that effect and say, "Well, we think it is all right because we think this is a witch hunt and we don't like Joseph McCarthy."

Contrariwise, there were some assertions of executive privilege by President Nixon which were so narrow that one would normally say "that is a reasonable assertion of executive privilege." But in the context of those years, which we all recall, and the cloud of suspicion and distrust, it was not reasonable. Now, could a court have taken that case and said, "Well, normally this would be OK, but we don't trust President Nixon so we are not going to allow the assertion of the privilege"?

Gentlemen, these issues are not issues for the courts. That is one of the reasons they have not gotten there. They should never get there. I do not apologize for not providing you an easy way to get them there.

Mr. JOHNSON. You have raised the doctrine of executive privilege with respect to State Department documents sent to the National Security Council, which were not personal, which were not just little private memoranda, which do not take place in the context of a discussion at the Cabinet level. You are talking about American documents—American State papers over which a President says, "I can assert the doctrine of executive privilege all the way back."

That is an untenable claim as far as I personally am concerned. I don't know what the rest of the Members of Congress think. Your explanation to me is totally unacceptable as a legal, historical, constitutional principle.

If there is no way to get this resolved other than—so far as I am concerned—by our withdrawing that claim, then I want to find out whether the contempt proceeding is the only way that it can be pursued. Because I cannot accept your claim. If we have to do it through the contempt proceeding, then I am sorry, that is the way it has to be, as far as I am concerned.

Mr. SCALIA. Congressman, I think you have the argument inverted here. I am not asserting that executive privilege can properly be asserted all the way back. I find it very difficult to conceive of any—

Mr. JOHNSON. How do you differentiate if the claim is allowed to stand?

Mr. SCALIA. It is rather you who are asserting it can not be exercised even one President back. So, even when you are dealing with an inquiry into—well, the one I mentioned in my testimony, about the censoring of military speeches: Although this was a process that had gone on, overlapping the administrations of Eisenhower and Kennedy, you would say that President Kennedy could assert the privilege with respect to documents dating from the time he took office and not before. That doesn't make any sense. If you are trying to protect the confidentiality of the process, he should be able to go back one President. I think sometimes you can go back two Presidents—but not to George Washington, sir.

Mr. JOHNSON. We are not talking about a declassification system. We are not talking about making this public.

Mr. SCALIA. I understand that.

Mr. JOHNSON. We are talking about the right of the Congress to have access to documents.

Mr. SCALIA. Yes, sir.

Mr. JOHNSON. You say that the President is asserting that doctrine.

Mr. SCALIA. And the right of the Congress to make it public if it chooses.

Mr. JOHNSON. Oh, no. No, sir; that is not really a question. That has not been asserted before, and that isn't anything that is being considered by this committee, because those documents have a certain classification, I assume. That classification system will be honored by this committee. We are not talking about making them public. We are talking about our right to have them and your right to withhold them.

Mr. SCALIA. I am not talking about your committee now and I am not talking about this context now. We were talking about executive privilege in general. I do not know that executive privilege in general only applies to providing documents to the Congress when there is no commitment by the Congress not to make them public. That is just not the doctrine we are talking about. In fact, the Congress usually asserts they don't have to make any commitments.

Mr. JOHNSON. We are at an impasse with regard to that third subpoena so far as I am concerned.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Mr. Scalia, I think perhaps there are some other misunderstandings that you may have. You mentioned quite a bit earlier that we needed to have presented to us, in a fundamentally fair way, the counterargument on what we were about to do. Your understanding was that we were about to cite the Secretary of State for contempt for the first time in history.

As the chairman has pointed out, we have already done that.

We have before us draft reports. I want to compliment you because I think you have done an excellent job in presenting a good deal of new and fresh information. The chairman said, and I too believe, we have progressed quite a way. But we are rapidly running out of time, Mr. Chairman and members of the committee, and I believe we should act at this point on the draft reports before us. We would have sufficient time then to continue to consider not only Mr. Scalia's presentation today, but that further information which I am sure he will be able to furnish to us for our consideration, and that which Mr. Leigh undoubtedly has for us.

It is important, I believe, to move ahead with this process. We have a recess coming on. We have additional views both in agreement and in disagreement—and perhaps neutral—in regard to the action we are about to take.

Mr. Chairman, I would like to at this time move that we consider the—Mr. Aspin, did you have a statement?

Chairman PIKE. Mr. Aspin is recognized.

Mr. ASPIN. Just a couple of questions before we adjourn the meeting and finish.

You say, Mr. Scalia, that each executive privilege case must be decided on its merits. You cited several cases.

I agree with you; that is right. Given the facts about that, and given special consideration of the fact that this committee has agreed not to release information without the approval of the President, should that not have been a factor in deciding whether executive privilege was to be asserted in this case?

Mr. SCALIA. Yes, sir, I think it should have been and it was. That is why long consideration was given and it is why, with respect to some information—to wit, the SALT information—we have agreed to provide it. But without meaning any disrespect of the committee,

there is nonetheless some information which we believe should not be disclosed. With respect to the information in this subpoena, moreover, what is involved is not merely the fear that the information will become public. There is a point of principle at issue in the Congress—even if it does not distribute the information anywhere else—the Congress, itself, prying into the most internal deliberative processes of the executive branch. We like it no more than you would the executive being able to sit in on your staff meetings.

Mr. ASPIN. Could you outline, in maybe a sentence or a paragraph or two, just exactly on what grounds you are asserting executive privilege in this case?

Mr. SCALIA. Of course, it is the President's assertion and not mine. This case involves all three of the classic elements which underlie the majority of assertions of executive privilege. There are military secrets involved in some of these covert operations; there are foreign affairs secrets involved in virtually all of them; and there is the most confidential Presidential advice giving and consultation involved in all of the documents you have requested. You have specifically requested the recommendation of the Department of State to one of the closest advisory committees to the President. Those are the three.

Mr. ASPIN. I just wanted to get on the record exactly what it was.

You see no way in which the executive can provide any kind of information on that document, or on that subpoena, at all—going back to what Mr. Johnson was saying—or to try to find some way to provide some information, without violating your concern about executive privilege.

Mr. SCALIA. To the contrary, I think I said it was my belief that we have already told you what covert actions the State Department recommended—just which actions they were. I believe that is correct. If it is not correct, I will check on it.

Mr. ASPIN. In what form were we told about it?

Mr. SCALIA. It is on the list of the 40 Committee subpoena returns that you have. There is indicated in the margin the initiating agency with respect to each of those covert action approvals.

Chairman PIKE. What we have, you are saying, is the State Department's recommending of a deleted action in a deleted country; and you are using this to say that you have told us what the State Department recommended?

Mr. SCALIA. No, sir, I have apologized for those deletions and told you we would remedy them.

Chairman PIKE. I just wanted the record to be clear that we haven't got the slightest idea what the State Department recommended.

Mr. SCALIA. I think in some of the cases you do by reason of other documents, but your point is substantially correct, I think, Mr. Chairman. But that is not our intent; we are willing to let you know that.

Mr. ASPIN. It is your contention that once we have worked out the 40 Committee subpoena—the problems with compliance with the 40 Committee subpoena—at that point we will then have the essential information which would satisfy what we need to know under the subpoena to the Secretary of State?

Mr. SCALIA. I have to make one reservation.

I didn't plan it this way, but it works this way: The 40 Committee subpoena only asks for approvals, and this present subpoena asks for

State Department recommendations, whether they were approved or not approved by the 40 Committee. There would be a gap there. I am not sure we wouldn't be willing voluntarily to make up that gap. We might well. But you wouldn't get everything from the 40 Committee subpoena alone.

Mr. ASPIN. To follow up, maybe there is something here.

It is hard to say in the abstract, without looking at—and I want to look at—what is being offered to comply with the 40 Committee subpoena; but if we have that information and supplement it with perhaps a similar kind of information about State Department recommendations which were disapproved, that would perhaps satisfy our needs and at the same time would not violate your concerns about executive privilege.

Mr. SCALIA. I believe that is right, sir.

Mr. ASPIN. Let me say I think it is important that we make some kind of an effort to comply with that, to get what information we were looking for in that particular subpoena.

Let me say secondly that I think that our chances of working out a substantive resolution of the other two issues—the SALT and the 40 Committee subpoenas—are probably better than our chances of working out the procedural questions of who is to be cited if that subpoena is not complied with.

That is just my observation from having listened to the discussion. It seems to me we have a better chance of reaching agreement on the substance than we have on the procedure, because I don't know whom we cite if we don't cite Mr. Kissinger.

I yield back the time.

Chairman PIKE. The Chair recognizes Mr. Lehman.

Mr. LEHMAN. Thank you, Mr. Chairman.

I just want to go back over this 40 Committee subpoena to be sure I understand what you are recommending for compliance. I understand your anxiety about the papers coming away from where you keep them, although I think you have no need to feel that kind of anxiety. But what you are saying now is that only Mr. Ratliff—Rob Roy Ratliff—has access to these documents. Only he of the staff of the 40 Committee?

Mr. SCALIA. Yes, sir, that is my understanding.

Mr. LEHMAN. Do you know whether he takes other appropriate staff in with him?

Mr. SCALIA. My understanding is that he is the only one with access. That is one of the reasons we had trouble with compliance with the subpoena. He is the only one who can work on them.

Mr. LEHMAN. If he can't come up here, but I can go down there, will I have the same privilege as a member of this committee, that Rob Roy Ratliff now has?

Mr. SCALIA. Yes, sir, with respect to those portions of those documents the subpoena covers.

Mr. LEHMAN. Will I have information available to me in those documents relating to the money involved, the countries involved, although not the particular person who may be endangered by that information?

Mr. SCALIA. Yes, sir.

Mr. LEHMAN. I will have access to all but the person's individual name?

Mr. SCALIA. I didn't place that limitation on it, but if you offer it, I will take it.

Mr. LEHMAN. I am trying to find out the difference between me as a member of the committee and Mr. Ratliff. I want to know what privilege he has that I won't have as a member of this committee.

Mr. SCALIA. He will have the privilege to look at those portions of the documents that have nothing to do with decisions approving covert action.

Chairman PIKE. We simply have to take your word for it as to what has been deleted from the documents.

Mr. SCALIA. No, sir; I think we could work out a verification procedure somehow, too, in the spirit of SALT.

Chairman PIKE. I will tell you, as a result of a private conversation I had out in the other room with one of the gentlemen at your table, I am not sure we are going to get all the documents on SALT either.

Mr. LEHMAN. I am trying to find out what the hell "compliance" is.

Hegel said one thing we learn from history is that governments don't learn a damned thing from history. We are part of the Government and if we can't learn anything from history we are going to make the same mistakes. That is what I am trying to get to.

As a member of this committee, I want the members to have the same rights and privileges that Mr. Rob Roy Ratliff has. If they want to keep the name of the individual assigned secret, I am willing to accept that. Other than that, I think we are entitled to the information. We need this in order to have what I think is substantial compliance, and I will be willing to go down to your office to get it if you think you shouldn't send it to me.

I don't stand on that kind of ceremony. If you want something badly enough, you will go where it is. I yield back the balance of my time.

[Mr Scalia's prepared statement follows:]

PREPARED STATEMENT OF ANTONIN SCALIA, ASSISTANT ATTORNEY GENERAL, OFFICE
OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the committee, I appreciate your permitting me to appear, at the President's request, to urge your reconsideration of the contempt resolutions voted by this committee on November 14. We believe reconsideration is warranted because that action was based upon several misunderstandings which should not form the basis of action as serious as this. Although I intend to make the only formal presentation, I have with me several representatives of the various agencies involved in this matter who may assist in responding to your questions. They include Mr. Monroe Leigh, Legal Advisor of the Department of State; Mrs. Jeanne W. Davis, staff secretary, National Security Council; and Mr. Daniel Christman, National Security Council staff member.

I would like to begin, Mr. Chairman, by placing this matter in its context. The subpoenas which are the subject of the committee's present action were part of a long process of information gathering which the committee has been engaged for the past 5 months. As you know, in the vast majority of situations, the information has been obtained informally, by committee staff, without even the necessity of formal demand by a committee member, much less a formal subpoena. In the course of that process there has developed a constant day-to-day working relationship between your staff and those personnel in the various intelligence agencies who have responsibility for documents requested. There have also developed certain agreed upon practices as to the manner in which requests are inter-

preted and complied with—a matter which I will come back to later on. I think you will agree that during these past 5 months, this committee has received more information of a highly sensitive nature, involving the most confidential matters of military and foreign affairs, than has ever before been disclosed to any congressional committee, with the possible exception of the similar committee now functioning in the Senate.

On Friday morning, November 7, seven subpoenas issued by the committee were served upon executive branch personnel. One was addressed to the Central Intelligence Agency; that is not at issue here. A second, which is at issue, was addressed to the Secretary of State. The remaining five were addressed to "the Assistant to the President for National Security Affairs or any subordinate officer, official or employee with custody or control of the items described in the attached schedule"; only two of those are at issue here. All seven subpoenas, served at approximately 10 o'clock on Friday, November 7, were returnable at 10 o'clock, Tuesday, November 11—approximately 4 days (and only 2 normal working days) after service. The subpoenas as a whole, and particularly the five directed to the single Agency, the National Security Council, which has a relatively small staff, required an enormous amount of searching for the relevant documents or portions of documents; and in addition a large amount of examination of what had been discovered in order to determine whether there might be any proper basis for declining release. No complaint has been made as to the adequacy of compliance with four of these seven subpoenas. As to the remaining three, the committee's action on November 14 asserts a willful and contumacious refusal to comply. It is that decision we urge you to reconsider.

Let me address first the two subpoenas directed to the National Security Council. One sought "all 40 Committee and predecessor committee records of decisions taken since January 20, 1965 reflecting approvals of covert action projects." (I will hereafter refer to this as the "40 Committee" subpoena.) The second sought "All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the Department of Defense, and the Intelligence Community Staff since May 1972 relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok agreement of 1974." (I shall hereafter refer to this as the "SALT" subpoena.) I believe, Mr. Chairman and members of the committee, that those responsible for assembling and producing the requested documents were—with one notable exception—in good faith compliance with the subpoenas; and even as to that exception did not mean to be contumacious or to violate the law. That is the principal point which I wish to urge upon you. Initially, however, I would like to discuss some technical matters which do not go to good faith compliance but rather to the propriety of the action you have taken in order to punish what you regard as the lack of compliance.

Specifically, there are several reasons why, as a matter of law, it is not in my view possible to charge Secretary Kissinger with responsibility for compliance with these subpoenas. As I indicated above, neither subpoena was directed to Mr. Kissinger by name. Both were addressed, initially, to "the Assistant to the President for National Security Affairs." In point of fact, this was not merely a technical distinction. The transcript of the committee hearing on the day it issued the subpoenas indicates that the committee did not know or care whether the subpoena was addressed to Mr. Kissinger or to someone else occupying the office. That transcript shows the following exchange:

"Chairman PIKE. Who at the present time is the assistant to the President?

"Mr. FIELD. I believe the subpoena would still be directed to Dr. Kissinger because General Snowcroft has not been sworn in yet. It will be directed to the office so it really makes no difference in terms of who is occupying the office."

As the President's letter to you of yesterday indicates, "After November 3 [Mr. Kissinger] was no longer my Assistant for National Security Affairs."

Even, therefore, if the subpoenas were addressed only to the Assistant to the President for National Security Affairs, on November 7 that designation did not describe Mr. Kissinger. But in fact the subpoenas were not addressed only to the Assistant to the President for National Security Affairs, they were addressed to him or "any subordinate officer, official or employee with custody or control of the items described. * * *" And the return of the subpoena shows that it was in fact such an alternate individual that the process server sought to reach. That return is signed quite clearly "Barry Roth for Jeanne D. Davis." It is inconceivable that any receipt of this sort could support a contempt action against Mr. Kissinger.

I may add that receipt on behalf of Mrs. Davis was not Mr. Roth's own suggestion; the process server specifically requested receipt in that fashion. (I have an affidavit of Mr. Roth to that effect, which I will be happy to present to the committee.) For both of these grounds, therefore—both because he was not the Assistant to the President for National Security Affairs and because the subpoenas were not served upon or even sought to be served upon the Assistant to the President for National Security Affairs—Mr. Kissinger cannot be held accountable for any deficiencies which the committee believes to exist in compliance with these subpoenas.

But that would still leave us with the conclusion, Mr. Chairman, that the executive branch—whether or not it was Mr. Kissinger or any other particular individual who could properly be held accountable on the basis of these particular subpoenas—deliberately and willfully set out to disobey the law. Although I had no part in the compliance process myself, I have interviewed in some depth the individuals who had, and on the basis of that inquiry I am convinced, first, that there was technical noncompliance, and indeed substantial noncompliance in the case of one subpoena; and second, that given the circumstances and the motivation you should not deem that noncompliance to constitute contumacy.

Let me address, first of all, the SALT subpoena—and let me clear away some of the underbrush by discussing some elements which I believe the committee regards as noncompliance but which in fact do not constitute that. There was discussion, in a staff interview on the day the contempt resolutions were voted, of a foot-high stack of documents which should have been supplied in addition to the half-inch that was supplied. Those documents have since been provided; they actually measure somewhat under 1 foot, I believe. The vast majority of them, however, were thought—and I believe reasonably thought—not to be required by the subpoena. The confusion stemmed from the fact that the subpoena requested, in part, "all documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission."

In fact, the Arms Control and Disarmament Agency (ACDA) has no Standing Consultative Commission. The Standing Consultative Commission is not an agency of the United States but a joint U.S.-U.S.S.R. Commission established for purposes of working out SALT negotiations. There is, of course, a U.S. component of the Commission, but virtually none of the material which that component would furnish to NSC would relate to SALT compliance policy, which was understood to be the main object of the inquiry. Thus, those responsible for assembling documents to comply with the subpoena interpreted the phrase, "Arms Control and Disarmament Agency's Standing Consultative Commission" to refer to ACDA documents bearing upon the work of the Commission. This interpretation is rendered all the more plausible an explanation of the erroneous language of the subpoena by virtue of the fact that the Chairman of the U.S. component of the Commission was Deputy Director of ACDA, and it was thus thought that the Commission staff had in mind documents of the sort which appear over his signature but on ACDA stationery. Thus, the failure to provide documents furnished by the Standing Consultative Commission does not, in my view, constitute any noncompliance, much less willful noncompliance, with this subpoena.

Another portion of the foot-high stack is explained by yet another ambiguity in the request. The subpoena seeks "all documents furnished" by a number of agencies—but does not state furnished to whom. Both because of our understanding from the committee staff that NSC files were the object of the subpoena, and because of the fact that the service was explicitly sought to be made upon the staff secretary of the NSC, our personnel assumed—and again, I think quite reasonably—that the scope of the subpoena was limited to the NSC. There are many documents which come to the Assistant to the President for National Security Affairs (who by title is not, by the way, either the head of or a member of the NSC) which are not transmitted to the National Security Council, but are instead forwarded to an entirely separate system of files, outside the jurisdiction of the NSC, known as the "Presidential files." Some documents relevant to SALT compliance took this route, and hence were not found in the NSC files. I acknowledge, Mr. Chairman, that the decision not to examine the Presidential files for such information, though technically in compliance with the subpoena, was erroneous; it did not display that degree of cooperativeness in providing the substance of what the committee desired which has been our objective. And when the decision to omit Presidential files came to the attention of those having supervisory authority over the project, that decision was reversed and a sup-

plementary search of the Presidential files was ordered which resulted in a supplementary production of documents to the committee on November 18, two days after the original return date. We wish these documents had been provided in the original submission. But they were not strictly required, and in view of the extreme time limitations under which those charged with the search were operating, I hope you will find the initial decision to omit the Presidential files understandable.

Finally, there were omitted from the search and from the production, internal documents and memoranda of the NSC itself. These are not called for by the subpoena unless one interprets the language "the Intelligence Community Staff" to refer to the NSC staff—which is simply not a reasonable interpretation. Those responsible for the search interpreted that phrase to refer to the United States Intelligence Board, which is composed of staff representatives of the entire intelligence community. I believe that interpretation is correct.

Let me come now to those documents, very few in number—about 25, I believe—which were in my opinion withheld contrary to the technical requirements of the SALT subpoena. These consist of documents which were treated as immune from disclosure because they dealt with recommendations and advice-giving to the NSC or to close Presidential advisors. I would like to be able to say that these documents were merely temporarily withheld, in order to enable advice from the Justice Department and determination by the President with respect to the assertion of executive privilege. Given the time frame within which production had to be completed (4 days, only 2 of which were normal working days) this course of action would not have been unreasonable. In fact, however, I can find no evidence of such clarity of intent. Though these documents were ultimately submitted to the Justice Department for its judgment as to assertion of executive privilege, I have no reason to believe that was the clear original intent. Rather, I believe what occurred was merely the carrying over into this area of subpoenaed documents the procedures which these personnel—none of whom are lawyers—had constantly been employing with respect to the numerous nonsubpoena requests of the committee. As you know, the procedure has been to permit withholding or deletion of information highly sensitive or inappropriate for production, with the understanding that the committee staff will seek further disclosure if it has serious need for the information withheld. When dealing with a formal subpoena, I acknowledge that it is incorrect to proceed in this fashion. On the other hand, the error is understandable. It is difficult to change the rules in the middle of the game—and indeed, this committee and its staff have been tolerant of this practice with respect to other subpoenas, in determining that the withholding of a relatively small amount of information will not destroy substantial compliance. I believe that same situation exists with respect to this SALT subpoena, once the committee realizes that the vast bulk of documents which it erroneously believes were withheld were not covered.

There remains the question what is to be done with respect to the information which, as I have described above, was wrongfully withheld. That is no longer a problem. All of the documents which I discussed—not only the relatively few which were erroneously withheld, but even the much greater number that were withheld because not called for by the subpoena—have either been provided to the committee or made available for inspection by the committee or its staff. Whatever the confused situation might have been on the return date for the subpoena (and I believe it constituted substantial compliance) we are now in full compliance, and indeed overcompliance.

Let me turn now to the subject of compliance with the subpoena which sought "all 40 Committee and predecessor committee records of decisions taken since January 20, 1965 reflecting approvals of covert action projects." Here it cannot be reasonably asserted that there has been substantial compliance. I was frankly startled, as I expect you were, upon realizing the utterly uninformative nature of much of the material provided in response to the subpoena. There are really two deficiencies here, which must be explained separately.

First, there is the deletion of names of individuals and countries from all of the submissions. These are the only deletions made with respect to covert action approvals in those documents entitled "40 Committee decisions" or "40 Committee approvals." My investigation satisfies me that the personnel responsible for this submission knew not only that the subpoena by its terms did not permit such deletions, but also that the committee staff did not approve them. The reason for the deletions—a position which I believe was well-known by the

committee staff—was that to provide such information, identified by country and names of individuals, regarding all covert actions over a 10-year period, to be held in one place and to be distributed freely within and among the committee and staff, would provide a security threat of unacceptable dimensions. This problem had been raised with the committee staff before the subpoena was issued; and while an accommodation of interests had not been worked out, it was believed that the committee understood and respected our difficulty, and that an arrangement satisfactory to both sides could be devised. I think these deletions were improper, but from my discussions with the individuals involved, I believe that they acted not in a spirit of contumacy but rather in conformance with what they regarded as a continuing process of reaching accommodation of very difficult problems with the committee.

Their action must be seen in light of the fact that executive branch intelligence personnel and the committee staff had been regularly operating, before the subpoenas, on a day-to-day basis, under a system which would permit such deletions in making response to voluntary requests, with the expectation that the committee staff, when the deletions were too disruptive to the purpose of the request, would seek further information. Indeed, shortly after these documents were delivered, our personnel proposed alternative methods to your committee staff which might accommodate their needs in some other fashion. Again, I do not dispute this kind of haggling in response to a categorical subpoena is not proper. But in view of the extreme sensitivity of these materials; in recognition of the continuing process of which these subpoenas were only a part; and in acknowledgement of the fact that accommodations had in fact been accepted with respect to other subpoenas; I think you should not regard this action as motivated by a contumacious spirit.

The second totally separate problem with the 40 Committee production involves not specific deletions, but rather virtually incomprehensible summarization of 40 Committee approvals for meetings which there was no separate "Decision" or "Approval" document. In these instances, the "records of decisions taken * * * reflecting approvals" (the language of the subpoena) had to be excerpted from minutes which did not lend themselves to the effort. The committee staff had indicated that the totality of the minutes did not have to be provided, but it is clear that the excerpting here effected was beyond their expectation and, I think, beyond reason. Adding to the difficulty of the excerpting was the fact that the personnel working on this project misinterpreted the initial subpoena requests, so that it was only discovered on the day before the return date that 9 additional years had to be covered. The attempt to make an intelligible excerpting of so many minutes in a single day was unsuccessful in the highest degree. Here again, I urge you to consider that the unfortunate product was not the result of contumacy but of human error and poor judgment in an operation which had to be conducted under unreasonable time constraints. On this last point, I might note that no careful lawyer would permit his client to make a production of subpoenaed documents without undergoing, at the last stage, a lawyer's review of the general adequacy of the production. That did not occur in the present case, simply because there was no time.

The excerpted and the edited documents which are the subject of the foregoing discussion are now in the process of being considered for possible assertion of executive privilege. I hope, however, that such an assertion will not have to be made. In an attempt to provide a prompt resolution of this issue—and frankly, with some acknowledgement that our past action on this point, though well-intentioned, was not correct—I am authorized to advise the committee that we will be willing to provide access to so much of this material relating to covert action approvals as the committee may request, though we retain our objections to provide a complete set of such sensitive material covering such a long period for use by the committee.

Let me turn now to the third subpoena—that addressed to "Henry A. Kissinger, Secretary of State" and accepted on his behalf. If one were to attempt a description of documents which would have the highest possible claim to an assertion of executive privilege, one could only with difficulty surpass the description contained in this subpoena. It asks for recommendations made to one of the closest circles of Presidential advisers (namely, NSC, the 40 Committee and its predecessors) on matters of the most sensitive nature relating to foreign and military affairs (namely, covert actions). Not surprisingly, all of the documents originally identified as responsive to this subpoena were found by the State Department to warrant consideration for the assertion of executive privilege. On November 10, the day

before the return date, the Department informed your staff director by telephone, and later the same day by letter, that as they were being identified these materials were being brought to the attention of the appropriate office in the White House and that "the final decision on their release to the committee will have to be taken in the White House." On November 13, the day before your committee took its action on this resolution, Mr. Buchen, Counsel to the President, wrote Chairman Pike advising him that the documents were being reviewed "prior to a decision by the President, concerning whether or not they should be made available to the committee," and respectfully requesting, "in view of the very short time we have had to undertake this review," additional time to respond to your subpoena. This request was denied.

On November 14, during the meeting at which the committee voted on the contempt resolution relating to this subpoena (it appears from the transcript after the vote was taken, though I cannot be sure of that), Chairman Pike was presented with a letter from the Acting Legal Adviser of the Department of State informing him that the President had instructed Secretary Kissinger respectfully to decline compliance to the subpoena "on the basis of the President's assertion of executive privilege." I must add one further element to this chronology. Since November 14, by making use of files other than those of the State Department itself (an extension not strictly required by the subpoena) the Department has been able to identify seven additional documents which would be responsive to this subpoena. They are of generally the same character as the documents described in the acting legal adviser's letter; the President has already instructed Secretary Kissinger respectfully to decline production of six of these; the last, most recently identified, is still under consideration.

I wish to discuss first, Mr. Chairman, the propriety of asserting executive privilege with respect to these documents. In what has already been an overlong presentation, I do not mean to enter into a full-blown discussion of the doctrine of executive privilege. As you know, the right to withhold certain documents from congressional inquiry has been asserted by President since George Washington, and has been described by the Supreme Court in a recent decision as being constitutionally based, *United States v. Nixon*, 418 U.S. 683 (1974). It has most frequently been exercised with respect to military or foreign affairs secrets, and with respect to confidential advice to the President or his closest advisers. Obviously, all of these elements are combined in the present case. In my view there is no question that the subject matter is appropriate for an assertion of executive privilege; and this was the advice given to the President by the Attorney General.

I understand that some members of the committee entertain doubts concerning the availability of a claim of executive privilege in the present case because the documents in question were not addressed to the present President or his advisers, but rather to the Presidents and advisers of earlier administrations. I confess that this is an entirely new asserted limitation upon the doctrine which I have never heard before, although I have done some considerable study in this field. On its face, of course, it would not make much sense. Why does a fact which is a sensitive military or foreign affairs secret on January 19 suddenly become unsecret on January 20, when a new President is sworn in? It makes no sense whatever to say that his predecessor could protect it from congressional inquiry but he can not. Similarly, with that aspect of executive privilege which protects confidential advice-giving: The purpose of this protection is to enable advice-giving to be frank and forthright. It is hardly conducive to these values to maintain that advice can be protected only up to the date when a particular President leaves office; and that once he is gone the most unguarded statements of his advisers cannot be protected.

A look of the historic record discloses what one would expect, that no such limitation upon the privilege has been observed. The following instances should suffice: In 1846 President Polk refused a request of the House of Representatives to furnish it "an account of all payments made on President's certificates * * * from the 4th day of March 1841 until the retirement of Daniel Webster from the Department of State," a period which included the Presidency of President Harrison and a part of that of President Taylor. Richardson, "The Messages and Papers of the President," Vol. IV, pp. 431-434. During the investigation of the attack on Pearl Harbor by a joint congressional committee in 1945, President Truman reserved the right to claim privilege in certain areas, and the committee's minority report indicates that there were some limitations on the access to information. Wolkison, "Demands of Congressional Committees for Executive Papers," 10 Federal Bar Journal 103, 143-146. During the investigation by the

Senate Committee on Armed Services of the Military Cold War Education and Speech Review Policies, which covered practices during the Eisenhower and Kennedy Administrations, President Kennedy prohibited the disclosure of information not limited to acts which had occurred during his own tenure. "Military Cold War Education and Speech Review Policies," Hearings before the Special Subcommittee of the Committee on Armed Services, United States Senate, 87th Cong., Second Session, pp. 508, 725.

I understand that another reservation concerning the availability of Executive privilege in this case voiced by some members of the committee pertains to a supposed requirement that the privilege must not only be asserted by the President but must be communicated by him directly to the committee involved. This is again a limitation I confess I have never heard of. It would indeed seem strange that, although the Congress may delegate not merely the communication of a demand, but even the assertion of the demand, to one of its committees, and although that committee may serve the demand upon one of the President's subordinates rather than upon the President himself; nevertheless, the President must both personally decide upon the response of privilege and must personally convey it to the requesting committee. There is again nothing in the historical record which would support such a practice.

The normal form of a claim of privilege is a letter from the President instructing a department head not to disclose certain information, with communication of the prohibition to the Congressional Committee involved. For example: President Eisenhower's claim of privilege during the Army-McCarthy investigation took the form of a letter to the Secretary of Defense. "Public Papers of the Presidents, Dwight D. Eisenhower 1954," p. 483. During the Senate investigation of military Cold War Education and Speech Review Policies, President Kennedy's claim of privilege took the form of letters addressed to the Secretaries of Defense and State. There have been, of course, instances where Presidents have communicated directly with committees, especially where requests were directly addressed to them; the examples set forth above, however, indicate that such procedure is not mandatory. Finally, it may be noted that the assertion of executive privilege against the Judicial Branch, which is another facet of the same doctrine, has been sanctioned by the Supreme Court when made by Cabinet Secretaries without even evidence of specific Presidential consideration of the particular assertion, much less direct Presidential communication, "United States v. Reynolds," 345 U.S. 1, 7-8 (1952). See also "Kaiser Alum. & Chem. Co. v. United States," 141 Ct. Cl. 88, 42-43 (1958).

The simplicity of the executive privilege issue in the present case is marred by the fact that the final assertion was not made to the committee until the day of (probably after the hour of) the original contempt vote. In the present circumstances, however, I think this is inconsequential. Surely the Presidential power to assert the privilege carries with it the Presidential ability to take the time necessary to consider its assertion. The 4 days (2 business days) accorded to find the documents, identify the privileged material, obtain expert advice concerning the privilege and—as the President desired—to devote the President's own attention to the matter, was on its face insufficient. And the record shows a refusal of the committee to provide a reasonable period of grace. In my view, it is clear that the assertion in the present instance was both proper and timely.

Even if it should be assumed, moreover, that the assertion of the privilege was improper, there still remains the issue of whether Secretary Kissinger could properly be held to be contumacious of the Congress for having obeyed the President's instruction on the matter. At least where the claim of privilege is colorable, I think that highly unlikely. The Secretary, after all, is a subordinate of the President and must be permitted to follow apparently lawful instructions unless the Executive Branch is not to become a house divided. Indeed, it may be of questionable constitutionality to subject an Executive Branch officer in a matter such as this to the unavoidable risk of criminal liability for obeying an apparently lawful directive of the President.

I wish to make one final point, Mr. Chairman, which is in a sense quite technical and yet at bottom reflects basic considerations of fairness. I have been seeking this morning to induce this Committee to reconsider an action it has already taken—a task which, as any lawyer knows, is an up-hill struggle. It is to my knowledge the invariable practice of Congressional committees—and indeed a practice that may be required by due process—to provide an opportunity for explanation and final categorical refusal before a citation for contempt is voted. This privilege was not accorded in the present case. I believe that if the Executive Branch had had the opportunity, before your action was initially

taken, to provide the explanations for apparent non-compliance, and the reasons for the areas of genuine non-compliance which existed in the present case, you might have been disposed to reach a different result.

Since we did not have that opportunity, I hope you will not merely reconsider the matter but consider it anew, without the inertia that a decision once taken normally provides. In the one area covered by the State Department subpoenas, I hope the Committee will see that the spirit of mutual accommodation which must enliven our system of Government counsels that this Committee not press for the production of material so close to the heart of the executive process—just as, in many other areas during this inquiry (the SALT subpoena being one of them) the President has declined to make any assertion of executive privilege though it might well have been available. As to the other areas covered by these three subpoenas; we have, I believe, now made entire compliance with respect to the SALT documents and are willing to discuss possible alternatives with respect to the 40 Committee subpoena. I am confident that these matters can be worked out; I believe that the actions which Executive Branch officials have taken up until this time have not been meant to be contemptuous of the role or the functions of this committee; and I am hopeful that you will see that it would harm rather than benefit the nation to proceed with the present resolutions.

Chairman PIKE. Does anybody else seek recognition before Mr. Hayes makes his motion? Do you wish to make a motion, Mr. Hayes?

Mr. HAYES. Mr. Chairman, I would like to move that the committee adopt the draft report of its action taken on November 14, 1975, in regard to the resolution on the contemptuous behavior of Henry A. Kissinger as Secretary of State, certify the report to the Speaker of the House, and proceed in the manner and form prescribed by law.

Chairman PIKE. Mr. Hayes, you are entitled to 5 minutes, if you want it, in support of your motion. Mr. Treen wants to speak in opposition, I presume, on the motion. Is that correct, Mr. Treen? I think we all understand the issues.

Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman. You are quite right. I think we do understand the issues. I didn't ask for this time to reargue all of the issues, but to state that I will vote against the report and I will vote Mr. McClory against the report by authority of the proxy he has left with me. The reason is that each of the reports contain the language recommending that the report be adopted by the full House—that is, the contempt citation be adopted by the full House.

Since we are opposed to that, we will vote against the reports and we will file our reasons in supplemental views to the report in accordance with the procedures of the committee.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Mr. Chairman, just to clarify the record, what we are doing here is filing the report in connection with the citations that we voted last week.

Chairman PIKE. That is correct.

Mr. ASPIN. If we vote this report, it does not mean that if at some point, we work out something we cannot vote in favor of rescinding.

Chairman PIKE. I would say more than that. The gentleman is absolutely correct. I would say that obviously, at any time we deem—and by “we” I mean the staff and our committee—there is substantial compliance with any of these three subpoenas, I want to assure the gentleman that I have no desire to take the issue to the floor on that basis.

By the same token, if we deem that there is not substantial compliance, I don't want to pretend to anybody that I don't have every intention of taking it to the floor.

Mr. ASPIN. Thank you, Mr. Chairman. I just wanted to make sure that people understand.

The second point is, if we do vote for the report, that does not have any impact on whether we might want to file supplementary views or additional views.

Chairman PIKE. I encourage all members to file dissenting, additional, supplemental, or any other views, and they will have until 1 week from tomorrow to get those views to the committee.

Mr. ASPIN. Thank you, Mr. Chairman.

Mr. JOHNSON. This motion, as I understand it, is just for the draft report with respect to the one subpoena to the Secretary of State.

Chairman PIKE. That is correct. I think proper procedure would require that we have separate votes on each of these draft reports.

The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. By proxy, aye.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. No.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. McClory.

Mr. TREEN. No by proxy.

The CLERK. Mr. Treen.

Mr. TREEN. No.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of 10 to 3, the draft report is agreed to.

Do you wish to make another motion, Mr. Hayes?

Mr. HAYES. Yes.

Mr. Chairman, I would make the same motion in regard to the draft report citing Henry A. Kissinger, which draft report is labeled "40 Committee."

Chairman PIKE. We understand the motion, I think.

Mr. Treen.

Mr. TREEN. Mr. Chairman, I make the same remarks with regard to this motion. In the conclusion of the report there is a recommendation that the House of Representatives adopt the contempt resolution. Mr. McClory and I will vote against the report and file written reasons at a later time.

Chairman PIKE. Mr. Kasten?

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. Chairman, on these two reports—the report of the 40 Committee and the report of the SALT compliance—I think that the committee this morning has received enough new evidence to make these reports no longer necessary or useful. We have been told by the President of the United States there is no basis—and I am quoting from his letter—“no basis for the resolutions addressed to Secretary Kissinger on these subpoenas.” And through his answer to very detailed questions, I think the counsel before us has assured us that we simply have erred in the addressing of these subpoenas. I think the committee should not vote to adopt these reports. I think instead the committee should seek to amend the subpoenas so that they are addressed to the proper individual or individuals.

But, no matter what we do with the subpoenas, it seems to me the Secretary of State is no longer, or can be no longer, thought to be in contempt of Congress. That is the point that the President brought out in his letter. I think we should not adopt this report and that we should not adopt the report on the SALT agreement.

In no way do I believe the committee should not have the information; we ought to have the information. The subpoenas ought to be addressed properly. The staff and the people at the National Security Council and elsewhere ought to work to find the information that we need and make it available to the committee in the form that we want it. But I do not think that the Secretary of State is now in contempt of Congress or should be cited as being in contempt of Congress and that therefore these reports ought not to be adopted.

Mr. ASPIN. Briefly, in response to the point raised by the gentleman from Wisconsin, I think there is a lot to what he says. I think in part his remarks go to the citation rather than to the report. Second, I think we do have a question—if we have got the wrong man—about just exactly who the right man or woman is.

I would think that the best procedure is to go ahead and vote for the report and see whether they comply with the subpoena. Then we don't have to worry about citing anyone.

Chairman PIKE. Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman. The points raised by Mr. Kasten, I think are irrefutable. We are talking about a contempt citation. I have looked at this not as a matter of personalities of anybody involved, but as a legal matter. It is regrettable it wasn't pointed out to the committee at the time that Dr. Kissinger was not the assistant to the President; but as a matter of fact, that was not pointed out. Right now we are faced with a statement of the President of the United States saying Secretary Kissinger had no responsibility for responding to these subpoenas nor for supervising the response to them.

The only way it seems to me we can continue with the citation is to say that that is an incorrect statement; that the President has in effect misled the committee. I will not accept that premise. I will accept the President's statement that Dr. Kissinger was not acting in that capacity at the time and therefore the contempt citation should not issue, and I intend to vote against the next two.

Chairman PIKE. The Chair would like to just express his own views on this subject. I would be inclined to accept the President's statement also, if he presented us with any alternative. We are told that Dr. Kissinger was not the proper person, he was not the Assistant to the President for National Security Affairs—there was no Assistant to the President for National Security Affairs. We are told that Mr. Ratliff is the only person who has access to all of these files, but no one has ever said that Mr. Ratliff is the person who has custody, in the sense of making the determination that these files will be made available to our committee.

We are told that General Scowcroft is not the Assistant to the President for National Security Affairs, and I believe that in the past there has been an opinion by the Justice Department to the effect that no person can serve in that capacity while he has a military commission.

I do not think that our acting on this resolution at this time is going to do anything but perhaps encourage that which has been held out to us this morning—that is, substantial compliance. I think we are being diverted from a procedure when the President said in his letter that the principal issue is that there will be substantial compliance, and I frankly would prefer to go the "substantial compliance" route.

Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman. I will be voting against the three reports before us today, and if it goes to the floor, against the resolution citing the Secretary of State for contempt. I do so not because I believe that the Congress does not have the right to this material. I feel clearly that the Congress does have a right to obtain this material. A no vote will be cast on the basis that while the Congress has a right to obtain it, it also has the responsibility for protecting this information and for preventing damage to the country that the release of the information would bring about. I contend that our present rules and mechanisms within the Congress are not such that we can responsibly protect this information whose release could be damaging to the country. For that reason, I will be voting against them and filing a dissenting view in the report.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. No.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. McClory.

Mr. TREEN. No by proxy.

The CLERK. Mr. Treen.

Mr. TREEN. No.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of eight ayes, five nays, the report is adopted. The draft report is adopted as the report of the committee.

Mr. HAYES. Mr. Chairman, I would like to move the committee adopt the draft report citing Henry A. Kissinger, which is labeled "SALT," in similar form to the previous motion.

Chairman PIKE. Is there any further discussion on the motion?

Mr. Treen.

Mr. TREEN. Mr. Chairman, I would like to announce that Mr. McClory and I will both vote against the resolution because it recommends to the House of Representatives that the contempt citation be adopted. Since we oppose that, we will vote against it and file dissenting views at the proper time.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Mr. GIAIMO. Aye.

The CLERK. Mr. Stanton.

Mr. STANTON. Aye.

The CLERK. Mr. Dellums.

Mr. DELLUMS. Aye.

The CLERK. Mr. Murphy.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. No.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. McClory.

Mr. TREEN. No by proxy.

The CLERK. Mr. Treen.

Mr. TREEN. No.

The CLERK. Mr. Kasten.

Mr. KASTEN. No.

The CLERK. Mr. Johnson.

Mr. JOHNSON. No.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of eight yeas and five nays, the draft report is adopted as the report of the committee.

Mr. TREEN. A technical question, Mr. Chairman. Is it the intent to file three separate documents? Will we need to file separate dissenting views?

Chairman PIKE. That is a good question, and my opinion is that there will indeed be three separate reports; yes.

Mr. TREEN. Is it the intention to go to the Rules Committee for a rule?

Chairman PIKE. The intention is not to go to the Rules Committee for a rule.

Mr. TREEN. We go as a privileged resolution.

Chairman PIKE. That is correct.

Mr. TREEN. If there is any change in the reports which have been adopted now, could we assume then that we would have additional time?

Chairman PIKE. There will be no changes in the reports which have been adopted now. I think it would be improper under our rules to change the reports which have been adopted.

Mr. TREEN. Thank you, Mr. Chairman.

Chairman PIKE. Let me say if there is a comma misplaced or a semicolon or something like that, it will be corrected.

The committee will stand in recess until after the recess, subject to the call of the Chair.

[Whereupon, at 12:45 p.m., the committee was recessed, to reconvene at the call of the Chair.]

APPENDIXES

APPENDIX I.—COMMITTEE SUBPENAS

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized
representative,

You are hereby commanded to summon the Director of Central Intelli-
gence, or any subordinate officer, official or employee with
custody or control of the things described in the attached schedule,

to be and appear before the Select Committee on Intelligence

~~Committee~~ of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring with

him the items specified in the schedule attached hereto and

made a part hereof in the Hearing Room of the House Armed Services
Committee, 2118 Rayburn House Office Building

~~in the chamber~~ in the city of Washington, on or before September 11, 1975

at the hour of 10:00 a.m.

produce and deliver said items to said Committee or
then and there to ~~testify concerning matters of inquiry connected with the Committee's~~
their duly authorized representative in connection with the Committee's
~~not to depart without leave of said Committee~~ investigation authorized and detailed
by H. Res. 591, a copy of which is annexed hereto.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
10th day of September, 1975

Otis G. Pike
Otis G. Pike,

Chairman.

Attest:

R. D. Jennings
Clark.

SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED PURSUANT TO
SUBPOENA OF THE SELECT COMMITTEE ON INTELLIGENCE

1. For the period of September 25, 1973 through October 6, 1973 on a daily basis, or as frequently as same were issued, the original documents as follows:

- a. All Special Reports of the Watch Committee.
- b. The original document entitled "Written Input to the Intelligence Community Post-mortem on the period before the 1973 Middle East War." OHS
- c. All National Intelligence Estimates related to the Mideast.
- d. All daily Central Intelligence Bulletins.
- e. All CIA "Information Reports" from the Mideast countries.
- f. The original document entitled "The Performance of the Intelligence Community before the Arab-Israeli War of October, 1973: A Preliminary Post-mortem Report." OHS
- g. Original copies of follow-up Intelligence Community studies performed for the period subsequent to that covered by the preliminary post-mortem report. OHS
- h. Responses to the preliminary post-mortem Report by the Intelligence Agencies involved. OHS
- i. All documents reviewed in the preparation of the preliminary post-mortem report. OHS
- j. Copies of all Intelligence Community staff interviews performed in the preparation of the preliminary post-mortem report. OHS

2. For the period of July 1, 1974 through August 31, 1974, on a daily basis, or as frequently as same were issued, the original documents as follows, as they relate to Greece, Turkey and Cyprus:

- a. All Special Reports of the Watch Committee or equivalents thereof.
- b. Original document entitled "Post-Mortem Report and Examination of the Intelligence Community's Performance before and During the Cyprus Crisis of 1974." OHS
- c. All National Intelligence Estimates related to Greece, Turkey and Cyprus.
- d. All daily Central Intelligence Bulletins.

Schedule of Items Required to be Produced Pursuant to Subpoena
of the Select Committee on Intelligence
Page 2

e. All CIA "Information Reports" from Greece, Turkey and Cyprus.

f. All documents reviewed in the preparation of the Post mortem report dated January, 1975.

g. Response to all Post-Mortem Reports on the Cyprus crisis of 1974 by the agencies involved.

h. Copies of all Intelligence Community staff interviews conducted in the preparation of Post-Mortems on the Cyprus crisis of 1974.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized
representative,

You are hereby commanded to summon the Assistant to the President
for National Security Affairs, or any subordinate officer, official
or employee with custody or control of the things described in the
attached schedule,
to be and appear before the Select Committee on Intelligence

~~Committees~~ of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring with
him the items specified in the schedule attached hereto and made
a part hereof in the Hearing Room of the House Armed Services
Committee, 2118 Rayburn House Office Building

~~in his chambers~~ in the city of Washington, on or before September 11, 1975

at the hour of 10:00 a.m.
produce and deliver said items to said Committee or
then and there to ~~testify concerning the matters of inquiry committed to said Committee and decide~~
their duly authorized representative in connection with the Committee's
~~not to do so without leave of said Committee~~ investigation authorized and detailed
by H. Res. 591, a copy of which is annexed hereto.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
10th day of September, 1975

Otis G. Pike
Otis G. Pike,

Chairman.

Attest:

R. D. Jennings
Clerk.

**SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED PURSUANT TO
SUBPOENA OF THE SELECT COMMITTEE ON INTELLIGENCE**

1. For the period of September 25, 1973 through October 6, 1973, on a daily basis, or as frequently as same were issued, the original documents as follows, as they relate to the Mideast War:

a. Reports provided to the National Security Council by U.S. intelligence agencies concerning the likelihood of hostilities in the Middle East.

b. Estimates and reports provided to the President by the National Security Council.

~~c. A listing of the appointments and memoranda of conversations of the Assistant to the President for National Security Affairs for the period listed above.~~ DAB

2. For the period of July 1, 1974 through August 31, 1974, on a daily basis, or as frequently as same were issued, the original documents as follows, as they relate to Greece, Turkey and Cyprus:

a. Reports provided to the National Security Council by U.S. intelligence agencies concerning major political or military developments in Greece, Turkey or Cyprus.

b. Estimates and reports provided to the President by the National Security Council.

~~c. A listing of the appointments and memoranda of conversations of the Assistant to the President for National Security Affairs for the period listed above.~~ BGP

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized
representative,

You are hereby commanded to summon the Director, National Security
Agency, or any subordinate officer, official or employee with
custody or control of the things described in the attached schedule,
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring with
him original copies of all daily SIGINT reports concerning the
following: (1) ~~for the period from September 1, 1973 through October 6,~~
~~1973 relating to the Midwest;~~ (2) for the period July 1, 1974
through August 31, 1974 as relating to Greece, Turkey and Cyprus
in the Hearing Room of the House Armed Services Committee, 2118
Rayburn House Office Building

at ~~the chamber~~ in the city of Washington, on September 11, 1975

at the hour of 10:00 a.m.
produce and deliver said items to said Committee or their
then and there to ~~produce and deliver said items to said Committee and to~~
duly authorized representative in connection with the Committee's
~~investigation authorized and detailed by H. Res. 591, a copy of which is annexed hereto.~~
investigation authorized and detailed
by H. Res. 591, a copy of which is annexed hereto.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
10th day of September, 1975

Otis G. Pike
Otis G. Pike, Chairman.

Attest:

[Signature]
Clerk.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

7. A. Searle Field, Staff Director, or his duly authorized representative

You are hereby commanded to summon the Director, Defense Intelligence Agency, or any subordinate officer, official or employee with custody or control of the things described in the attached schedule,

to be and appear before the Select Committee on Intelligence

Committees of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring with

him the items specified in the schedule attached hereto and made

a part hereof in the Hearing Room of the House Armed Services

Committee, 2118 Rayburn House Office Building

in their chambers in the city of Washington, on or before September 11, 1975

at the hour of 10:00 a.m.

produce and deliver said items to said Committee or then and there to ~~any member of the House of Representatives or any committee thereof~~ their duly authorized representative in connection with the Committee's ~~not to depart without leave of said Committee~~ investigation authorized and detailed by H. Res. 591, a copy of which is annexed hereto.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives

of the United States, at the city of Washington, this

10th day of September, 1975

Otis G. Pike

Otis G. Pike,

Chairman.

Attest:

[Signature]
Clark

SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED PURSUANT TO
SUBPOENA OF THE SELECT COMMITTEE ON INTELLIGENCE

1. For the period of September 25, 1973 through October 6, 1973, on a daily basis, or as frequently as same were issued, the original documents as follows: all Defense Intelligence Agency Estimates, Current Defense Intelligence Summaries, Situation Reports, ~~and any and all cables emanating from the Defense Attache Office in Athens, National Military Intelligence Center daily briefings;~~ *on the subject of the MIA - L.S. 134* *July 20th* *DFC.*

2. For the period July 1, 1974 through ~~August 1, 1974~~ 1974, the original documents as they relate to Greece, Turkey and Cyprus, on a daily basis, or as frequently as same were issued, as follows: all Defense Intelligence Agency Estimates, Current Defense Intelligence Summaries, Situation Reports, and any and all cables emanating from the Defense Attache Offices in Greece, Turkey and Cyprus, National Military Intelligence Center daily briefings.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized
representative

You are hereby commanded to summon the Director of Central Intelligence,
or any subordinate officer, official or employee with custody or
control of the items described in the attached schedule,
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring with
him the items specified in the schedule attached hereto and made a
part hereof in the office of the Staff Director of the House Select
Committee on Intelligence, Room B-316 Rayburn House Office Building

in the city of Washington, on or before September 17, 1975

at the hour of 10:00 a.m.
produce and deliver said items to said Committee or
then and there to ~~their duly authorized representative~~ their duly authorized representative in connection with the Committee's
~~investigation authorized and detailed by H. Res. 591, a copy of which is annexed hereto.~~
investigation authorized and detailed
by H. Res. 591, a copy of which is annexed hereto.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
12th day of September, 1975.

Otis G. Pike
Otis G. Pike

Chairman.

Attest:

[Signature]
Clerk.

**SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED PURSUANT TO
SUBPOENA OF THE SELECT COMMITTEE ON INTELLIGENCE**

1. Original copies of any and all post-mortems which originated with the Agency or of which the Agency may have possession, or such documents created by any other agency of government with respect to the Tet Offensive of 1968.
2. Original copies of Intelligence Bulletins, Special Reports, Estimates and Predictions for the period of seven days preceding the Tet Offensive of 1968.
3. The original copy of the comments by the Office of Current Intelligence (or its predecessor) on or about December 2, 1967, relating to the memo written by Thaxter Goodell on or about 24 November 1967 relating to the likelihood and capability of a Communist offensive in Vietnam in 1968.
4. The original copy of the final version of the 24 November 1967 memo with the five page cover letter sent from Richard Helms to Walt Rostow on 15 December 1967 relating to the likelihood and capability of a Communist offensive in Vietnam in 1968.
5. The original copy of "Eyes Only" cable from William Westmoreland and Creighton Abrams to Gen. Wheeler relayed to Richard Helms dated on or about 20 August 1967 concerning the order of battle in Vietnam.
6. The original copy of "Eyes Only" cable sent via CIA channels from Ellsworth Bunker to Walt Rostow dated on or about 28 October 1967 concerning the Self Defense Militia in Vietnam.
7. The original copy of a CIA memo for Secretary of Defense Robert S. McNamara entitled "Review of the Situation in Vietnam" dated on or about 8 December 1967.

COPY

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized
representative

You are hereby commanded to summon HENRY A. Kissinger, Secretary of
State, or any subordinate officer, official or employee with
custody or control of the items described in the attached schedule,
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring with

him the items specified in the schedule attached hereto and made

a part hereof in the office of the Staff Director of the House

Select Committee on Intelligence, Room B-316 Rayburn House Office
Building

in this Chamber in the city of Washington, on or before October 15, 1975

at the hour of 10:00 a.m.
produce and deliver said items to said Committee or
then and there to any duly authorized representative of the Committee and to
their duly authorized representative in connection with the
Committee's investigation authorized
and detailed by H. Res. 591, a copy of which is annexed hereto.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives

of the United States, at the city of Washington, this

2nd day of October, 1975

Otis G. Pike

Otis G. Pike,

Chairman.

Attest:

W. D. Jennings
Clerk.

SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED PURSUANT TO
SUBPOENA OF THE SELECT COMMITTEE ON INTELLIGENCE

The documents and papers described as the Dissent
Memorandum prepared by Thomas Boyatt as Director of Cypriot Affairs
of the Department of State relating to the Cyprus Crisis of 1974.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized representative.

You are hereby commanded to summon the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the attached schedule and by service of a copy hereof the said Assistant to the President for National Security Affairs, or any subordinate officer, official or employee is hereby commanded
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring

with him the items described in the schedule annexed hereto and made a part hereof in the office of the Select Committee on Intelligence, Room B-316 Rayburn House Office Building,

in the chamber in the city of Washington, on November 11, 1975

at the hour of 10:00 A.M.

produce and deliver said items to said Committee or then and there to their duly authorized representative in connection with the Committee's investigation authorized and detailed by H. Res. 591, a copy of which is annexed.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives

of the United States, at the city of Washington, this

6th day of November, 1975.

Otis G. Pike

Otis G. Pike,

Chairman.

Attest:

Robert J. Jennings
Clark

SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED
by the Assistant to the President for National Security Affairs,
PURSUANT TO SUBPOENA OF THE
HOUSE SELECT COMMITTEE ON INTELLIGENCE,
Dated November 6, 1975

1. All 40 Committee records of decisions taken since January 20, 1965 reflecting approvals of covert action projects.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized representative.

You are hereby commanded to summon the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the attached schedule and by service of a copy hereof the said Assistant to the President for National Security Affairs, or any subordinate officer, official or employee is hereby commanded
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring

with him the items described in the schedule annexed hereto and made a part hereof in the office of the Select Committee on Intelligence, Room B-316 Bayburn House Office Building,

in their chamber in the city of Washington, on November 11, 1975

at the hour of 10:00 A.M.

produce and deliver said items to said Committee or then and there to ~~testify touching matters of inquiry committed to said Committee, and he is~~ their duly authorized representative in connection with the Committee's ~~not to depart without leave of said Committee~~ investigation authorized and detailed by H. Res. 591, a copy of which is annexed.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives

of the United States, at the city of Washington, this

6th day of November, 19 75

Otis G. Pike

Otis G. Pike,

Chairman.

Attest:

H. Searle Field
Clerk.

SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED
By the Assistant to the President for National Security Affairs,
PURSUANT TO SUBPOENA OF THE
HOUSE SELECT COMMITTEE ON INTELLIGENCE,
Dated November 6, 1975

1. Minutes of all National Security Council Intelligence Committee, Working Group, and Economic Intelligence Subcommittee meetings held since ~~November 8, 1971~~.

inception of these groups

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized representative.

You are hereby commanded to summon the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the attached schedule and by service of a copy hereof the said Assistant to the President for National Security Affairs, or any subordinate officer, official or employee is hereby commanded
to be and appear before the Select Committee on Intelligence

~~Committee~~ of the House of Representatives of the United States, of which the Hon. Otis G. Pike is chairman, and to bring

with him the items described in the schedule annexed hereto and made a part hereof in the office of the Select Committee on Intelligence, Room B-316 Rayburn House Office Building,

~~at this chamber~~ in the city of Washington, on November 11, 1975

at the hour of 10:00 a.m.
produce and deliver said items to said Committee or then and there to ~~testify touching matters of inquiry connected herewith~~ their duly authorized representative in connection with the Committee's investigation authorized and detailed by H. Res. 591, a copy of which is annexed.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
6th day of November, 1975



Otis G. Pike
Otis G. Pike,

Chairman.

Attest:

H. P. Jennings
Clerk.

**SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED
By the Assistant to the President for National Security Affairs,
PURSUANT TO SUBPOENA OF THE
HOUSE SELECT COMMITTEE ON INTELLIGENCE,
Dated November 6, 1975**

1. All Washington Special Action Group meeting minutes relating to:
 - a. the October, 1973 Middle East War and subsequent U.S. troop alert;
 - b. the Cyprus crisis of 1974;
 - c. the Portugal coup of April 24, 1974.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized representative.

You are hereby commanded to summon the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the attached schedule and by service of a copy hereof the said Assistant to the President for National Security Affairs, or any subordinate officer, official or employee is hereby commanded
to be and appear before the Select Committee on Intelligence

~~Committee~~ of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring

with him the items described in the schedule annexed hereto and

made a part hereof in the office of the Select Committee on Intelligence, Room B-316 Rayburn House Office Building,

~~in their chamber~~ in the city of Washington, on November 11, 1975

at the hour of 10:00 A.M.
produce and deliver said items to said Committee or
then and there to ~~testify touching matters of inquiry committed to said Committee, and have~~
their duly authorized representative in connection with the Committee's
~~task independent with that leave of said Committee.~~ investigation authorized and detailed
by H. Res. 591, a copy of which is annexed.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
6th day of November, 1975

Otis G. Pike
Otis G. Pike, Chairman.

Attest:

[Signature]
Clerk.

**SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED
By the Assistant to the President for National Security Affairs,
PURSUANT TO SUBPOENA OF THE
HOUSE SELECT COMMITTEE ON INTELLIGENCE,
Dated November 6, 1975**

1. All intelligence reports furnished to the National Security Council by the Central Intelligence Agency, Defense Intelligence Agency, and National Security Agency between October 15, 1973 and October 28, 1973 relating to the 1973 Middle East War and the military activities of the Soviet Union.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized representative.

You are hereby commanded to summon the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of the items described in the attached schedule and by service of a copy hereof the said Assistant to the President for National Security Affairs, or any subordinate officer, official or employee is hereby commanded
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring

with him the items described in the schedule annexed hereto and
made a part hereof in the office of the Select Committee on Intel-
ligence, Room B-316 Rayburn House Office Building,

in the city of Washington, on November 11, 1975

at the hour of 10:00 A.M.
produce and deliver said items to said Committee or
then and there to testify ~~under oath~~ ~~and answer~~ ~~all questions~~ ~~and~~ ~~their~~ ~~duly~~ ~~authorized~~ ~~representative~~ ~~in~~ ~~connection~~ ~~with~~ ~~the~~ ~~Committee's~~ ~~investigation~~ ~~authorized~~ ~~and~~ ~~detailed~~ ~~by~~ ~~H. Res. 591, a copy of which is annexed.~~
Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
6th day of November, 1975

Otis G. Pike
Otis G. Pike, Chairman.

Attest:

Walter Jennings
Clerk

**SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED
By the Assistant to the President for National Security Affairs,
PURSUANT TO SUBPOENA OF THE
HOUSE SELECT COMMITTEE ON INTELLIGENCE,
Dated November 6, 1975**

1. All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission, and Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency to the National Security Council since May, 1972 relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized representative.

You are hereby commanded to summon Henry A. Kissinger, Secretary of State, or any subordinate officer, official or employee with custody or control of the items described in the attached schedule and by service of a copy hereof the said Henry A. Kissinger, Secretary of State, or any subordinate officer, official or employee is hereby commanded

to be and appear before the Select Committee on Intelligence

~~Committee~~ of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring

with him the items described in the schedule annexed hereto and made a part hereof in the office of the Select Committee on Intelligence, Room B-316 Rayburn House Office Building,

in their chamber in the city of Washington, on November 11, 1975

_____ at the hour of 10:00 a.m.
produce and deliver said items to said Committee or then and there to testify, ~~and to answer all questions~~ ~~asked by the Committee~~ ~~and to answer~~ their duly authorized representative in connection with the Committee's ~~and to answer all questions~~ ~~asked by the Committee~~ investigation authorized and detailed by H. Res. 591, a copy of which is annexed.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
6th day of November, 1975

Otis G. Pike
Otis G. Pike,

Chairman.

Attest:

[Signature]
Clerk

**SCHEDULE OF ITEMS REQUIRED TO BE PRODUCED
By Henry A. Kissinger, Secretary of State,
PURSUANT TO SUBPOENA OF THE
HOUSE SELECT COMMITTEE ON INTELLIGENCE,
Dated November 6, 1975**

1. All documents relating to State Department recommending covert action made to the National Security Council and the Forty Committee and its predecessor committees from January 20, 1961 to the present.

ORIGINAL

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To A. Searle Field, Staff Director, or his duly authorized
representative.

You are hereby commanded to summon William E. Colby, Director of the
Central Intelligence Agency, or any subordinate officer, official
or employee with custody or control of the items described in the
attached schedule and by service of a copy hereof the said William
E. Colby, Director of the Central Intelligence Agency, or any sub-
ordinate officer, official or employee is hereby commanded
to be and appear before the Select Committee on Intelligence

Committee of the House of Representatives of the United States, of which the Hon. Otis

G. Pike is chairman, and to bring

with him the items described in the schedule annexed hereto and

made a part hereof in the office of the Select Committee on Intel-
ligence, Room R-316 Rayburn House Office Building,

in their chamber in the city of Washington, on November 11, 1975

, at the hour of 10:00 A.M.
produce and deliver said items to said Committee or
then and there to ~~any touching matters before any committee of said Committee and for~~
their duly authorized representative in connection with the Committee's
~~not to depart without leave of said Committee~~ investigation authorized and detailed
by H. Res. 591, a copy of which is annexed.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
6th day of November, 1975.

Otis G. Pike

Otis G. Pike,

Chairman.

Attest:

H. G. Jennings
Clark

SCHEDULE OR ITEMS REQUIRED TO BE PRODUCED
By William E. Colby, Director of the Central Intelligence Agency,
PURSUANT TO SUBPOENA OF THE
HOUSE SELECT COMMITTEE ON INTELLIGENCE,
Dated November 6, 1975

1. All written requests and memoranda of requests from the Central Intelligence Agency to the Internal Revenue Service from July 1, 1961 to date for tax information and/or official action.

APPENDIX II.—CORRESPONDENCE RELATING TO
COMMITTEE SUBPENAS
APPENDIX I.—COMMITTEE SUBPENAS

OTIS G. PIKE, H. T., CHAIRMAN
ROBERT H. GARRA, CONN.
JAMES V. STANTON, MISS
RENEALD Y. DELLUMS, CALIF.
MORRIS F. BRUNDT, H.L.
LEE AGON, WIS.
DALE NELSON, TEX.
PHILIP H. HAYES, DEL.
WILLIAM LINDEN, FLA.

A. SEARLE FIELD, STAFF DIRECTOR
AARON S. DODDER, COUNSEL
TELEPHONE: (202) 225-6791

Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

October 20, 1975

The President
The White House
Washington, D.C.

Dear Mr. President:

The House Select Committee on Intelligence requests your assistance concerning the activities of the National Security Council's "40 Committee."

I have asked a member of the Committee staff, Gregory Rushford, to obtain for the Committee a list of 40 Committee authorizations since 1965, and to inquire into the procedures by which these authorizations were conceived and implemented. Would you permit Mr. Rushford to visit the National Security Council's offices to obtain this information on October 23, 1975, and on subsequent occasions if necessary?

Thank you for your assistance in this matter.

Cordially,

Otis G. Pike
Otis G. Pike
Chairman

OGP/ca

DEPARTMENT OF STATE
THE DIRECTOR OF INTELLIGENCE AND RESEARCH
WASHINGTON

November 10, 1975

Dear Searle:

This is to confirm our telephone conversation this morning in which you clarified the scope of the Committee's subpoena to Secretary Kissinger, dated November 6, 1975. This was most useful, and our search for the relevant documents will be greatly facilitated by the more precise description of the material desired.

As I understand it the purpose of the subpoena is to obtain copies of all documents by which the Department of State took the initiative in proposing to the NSC or the Forty Committee (and its predecessors) the adoption of new covert action projects. In other words, the Committee seeks to identify situations in which the Department of State was the agency within the Government that conceived of the project and urged its consideration by the NSC or the Forty Committee.

The documents in these cases take various forms, e.g., memoranda to the President, memoranda to the Chairman of the Forty Committee, or memoranda to the Assistant to the President for National Security Affairs. We are moving as quickly as possible to identify them and bring them to the attention of the appropriate office in the White House. Because such memoranda were sent to the President or his close White House advisers, the final decision on their release to the Committee will have to be taken in the White House.

Sincerely,



William G. Hyland

Mr. A. Searle Field
Staff Director
Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C.

THE WHITE HOUSE
WASHINGTON

November 13, 1975

Dear Chairman Pike:

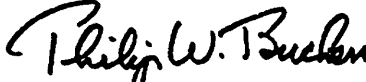
As stated to the Staff Director, Mr. Searle Field, by William Hyland in a letter dated November 10, the State Department has reviewed their files in response to your subpoena of November 6. They have identified documents that indicate that on eight occasions the Department of State submitted recommendations concerning the issue of Presidential approval of covert activities.

These documents were identified late Monday, and the White House along with other officials of the Executive Branch, are reviewing them prior to a decision by the President, concerning whether or not they should be made available to the Committee.

In view of the very short time we have had to undertake this review, and the demands on the President's schedule, we respectfully request additional time to respond to your subpoena. We believe that one week from today should be sufficient.

Thank you for your cooperation.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Otis G. Pike
Chairman
House Select Committee on
Intelligence
House of Representatives
Washington, D. C.

CONFIDENTIAL

THE WHITE HOUSE
WASHINGTON

November 11, 1975

Dear Mr. Chairman:

In response to the five subpoenas received from the House Select Committee on Friday, November 7, 1975, we are submitting herewith the documents described on the attached list. We have complied with the subpoenas to the best of our ability given the time constraints and the bulk of the material involved, and in accordance with the clarifications received from and understandings reached with Messrs. Field, Boos and Rushford of the Select Committee staff on Saturday, November 8, and again with Messrs. Boos and Rushford on Monday afternoon, November 10. If you or your staff have questions concerning the enclosed material, we are prepared to discuss them at your convenience.

Some explanatory comments may be in order in connection with certain of the documents. With regard to SALT compliance information, the documents furnished have been sanitized to protect extremely sensitive intelligence sources and methods. In the interest of full cooperation with the Committee, however, we have not deleted any material required to understand the substance of the activities involved and their significance from an intelligence viewpoint. Nor do the deletions downgrade the original security classification of the documents, which remain sensitive and require the fullest protection by the Committee. The attached SALT Monitoring Reports are offered in the spirit of attempting to comply with the specific desires stated by your staff to pursue this particular subject. We are prepared to offer appropriate members of your staff access to the unsanitized versions of these documents as well as to other materials less suitable for sanitization but which might be helpful to your investigations. Included in the latter case would be a draft interagency report on compliance issues shown to members of your staff on Monday. In this regard we suggest your staff contact the CIA review staff who will be glad to put them in touch with Intelligence Community experts on SALT compliance. I am sure these experts will be able to resolve any concerns your staff may have with regard to completion of their inquiry.

CONFIDENTIAL

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With regard to the subpoena for "all 40 Committee and predecessor committee records of decisions taken since January 20, 1965, reflecting approvals of covert action projects, "as you know, following discussions with Mr. Rushford, such records from 1966 through 1975 were provided the Committee on October 23-24, 1975. In addition, summaries were prepared of three actions per year designated by Mr. Rushford for each year from 1966 through 1974. Those for 1966 through 1968 were provided on October 24, and those for 1969 through 1974 on October 29. We have also attached the comparable record of 303 Committee decisions taken from January 20 through December 31, 1965, which we believe completes Mr. Rushford's request. Subsequent to our receipt of the subpoena, Mr. Boos of your staff met with members of my staff on Monday afternoon (November 10) and provided clarification as to the Committee's preferred format. We have undertaken to prepare our response in this area along the lines indicated by Mr. Boos as being desired. Those items we have so far been able to prepare to meet the revised requirements are also attached. We will, of course, continue to work toward completing this process as soon as possible.

With regard to the minutes of the Washington Special Actions Group on the Middle East, Cyprus and "the Portugal coup of April 24, 1974," there were no meetings of the WSAG on Portugal in 1974. As you know, we have previously supplied the Committee with the dates, list of attendance by principals and general subjects for WSAG meetings from October 1, 1973 to the present. We have now added to that information conclusions reached at each meeting on the Middle East and Cyprus, along with the text of the intelligence briefings given by the Director of Central Intelligence at these meetings where available.

We had also previously supplied the list of meetings and principal attendees of the NSC Intelligence Committee, its Working Group and Economic Subcommittee. We have now added to that information an indication of the subjects discussed at the meetings and any decisions reached.

With regard to the subpoena for intelligence reports submitted to the NSC from 15-28 October, 1973 (the Middle East War and associated Soviet military activities), we have compiled an extensive inventory of applicable reports. Attached are NSA reports covering this time period. Applicable CIA and DIA all-source intelligence summaries and reports (currently being sanitized for especially sensitive sources and methods

CONFIDENTIAL

- 3 -

by interagency representatives) will be forwarded as soon as possible. My staff will be in touch with yours as soon as these reports are ready, probably within a day or two.

The material supplied herewith in response to your subpoenas is forwarded on loan with the understanding that there will be no public disclosure of the classified information it contains without a reasonable opportunity for us to consult with respect to it. In the event of disagreement, the matter will be referred to the President. If the President then certifies in writing that the disclosure of the material would be detrimental to the national security of the United States, the matter will not be disclosed by the Committee, except that it would reserve its right to submit the matter to judicial determination.

Sincerely,



Brent Scowcroft

Lieutenant General, USAF

Deputy Assistant to the President
for National Security Affairs

Honorable Otis G. Pike
House of Representatives
Washington, D.C. 20515

CONFIDENTIAL

LIST OF ATTACHMENTS

SALT Compliance Reports, USIB

List of 303 Committee Decisions, Jan 20-Dec 31, 1965

WSAG Summary of Conclusions and DCI Briefings on
Middle East and Cyprus

40 Committee Approvals, 1965/1972-75

Agenda Items and Decisions of NSCIC/NSCIC Working
Group and Economic Subcommittee, 1971-1975

NSA Alert Cables and Messages on Middle East War
and USSR-Associated Military Activities

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

November 14, 1975.

Dear Mr. Chairman:

The Secretary of State has been instructed by the President respectfully to decline compliance with your subpoena to the Secretary of November 6, 1975, for the reason that it would be contrary to the public interest and incompatible with the sound functioning of the Executive branch to produce the documents requested.

The subpoena sought "all documents relating to State Department recommending covert action made to the National Security Council and the Forty Committee and its predecessor Committees from January 20, 1961, to present." The Committee staff has made clear that this is intended to cover recommendations originating with the State Department. An examination of our records has disclosed ten such documents, dating from the period 1962 through 1972. These consist of recommendations from officials in the State Department, sometimes the Secretary of State, to the Forty Committee or its predecessor, 303 Committee, or to the President himself in connection with consideration by one of those Committees.

The documents in-question, in addition to disclosing highly sensitive military and foreign affairs assessments and evaluations, disclose the consultation process involving advice and recommendations of advisers to former Presidents, made to them directly or to Committees composed of their closest aides and counselors.

The Honorable
Otis G. Pike, Chairman
Select Committee on Intelligence,
House of Representatives.

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Therefore, I advise you that the Secretary of State is declining to comply with such subpoena on the basis of the President's assertion of Executive privilege.

Sincerely,


George H. Aldrich
Acting

THE WHITE HOUSE
WASHINGTON

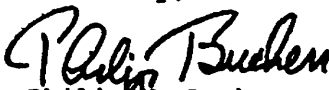
December 2, 1975

Dear Mr. Chairman:

On November 14, George H. Aldrich, Acting Legal Adviser of the Department of State, advised you by letter that the President had decided to invoke executive privilege with respect to documents sought in the Committee's subpoena of November 6, 1975, directed to the Secretary of State, and that Secretary Kissinger had accordingly been instructed respectfully to decline to comply with such subpoena. Mr. Aldrich stated in his letter that, as of that date, an examination of State Department records disclosed ten such documents covering the period 1961 through 1972.

This is to inform you that, since the date of Mr. Aldrich's letter, we have continued to search Executive Branch records for documents possibly subject to that subpoena and have, through information and documents not in the possession of the Department of State, identified an additional fifteen documents in which the Department of State proposed to the NSC, the 40 Committee or its predecessor, ten covert action projects. These documents cover the period from 1966 to 1971. Please be advised that the President has reviewed these additional documents and has decided to assert executive privilege with respect to them for the same reasons as compelled the assertion with respect to the documents previously identified.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Otis G. Pike
Chairman
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

THE WHITE HOUSE
WASHINGTON

November 19, 1975

Dear Mr. Chairman:

I want you to know of my deep concern because the Select Committee found it necessary on November 14 to vote in favor of three resolutions which could lead to a finding by the House of Representatives that Secretary of State Henry Kissinger is in contempt for failure to comply with three Committee subpoenas. This issue involves grave matters affecting our conduct of foreign policy and raises questions which go to the ability of our Republic to govern itself effectively. I know that you, Mr. Chairman, share my deep respect for the rights and powers of the House of Representatives -- where our cumulative service spans nearly four decades -- and for the obligations and responsibilities of the President. The two branches of government have an extremely serious responsibility to consider the issues raised in the ongoing foreign intelligence investigations dispassionately and with mutual respect.

Former Chief Justice Warren pointed out twenty years ago that there can be no doubt as to the power of Congress and its committees to investigate fully matters relating to contemplated legislation. Without this power, which includes the authority to compel testimony and the production of documents, the Congress could not exercise its responsibilities under Article I of our Constitution. However, this power, as broad as it is, is subject to recognized limitations. Not only is it limited by powers given to the other two branches, but it also must respect requirements of procedural due process as they affect individuals.

The action of your Committee concerning the November 14th resolutions raises, in my mind, three principal issues: the extent to which the Committee needs access to additional Executive Branch documents to carry out its legislative functions; the importance of maintaining the separation of powers between the branches and the ability of the Executive to function; and the individual rights of officials involved in this matter. I am not interested in recriminations and collateral issues which only serve to cloud the significant questions before us.

From the beginning of the investigations of the intelligence agencies, I have taken action to stop any possible abuses and to make certain that they do not recur as long as I am President. I have also endeavored to make available relevant information in a responsible manner to the appropriate committees of Congress.

I have given great weight to my responsibility to maintain the integrity of our intelligence community and the ability of this Nation to develop and use foreign intelligence. This is one reason why I have insisted that much of the information I have made available to Congress be kept secret, so that current foreign intelligence operations, which are critical for the national security, can continue effectively. In accordance with these principles, your Committee and the Senate Select Committee have received unprecedented access to Executive Branch documents and information.

Your Committee's November 6th votes on seven subpoenas for additional Executive Branch documents came in the context of several months of working together on this very difficult subject and a record of cooperation on both sides. They were served on November 7. The documents were due on the morning of November 11, and the appropriate Administration officials immediately went to work collecting the information. Four of the subpoenas were complied with fully. However, problems arose as to the remaining three issued to:

- "Henry A. Kissinger, Secretary of State, or any subordinate officer, official or employee with custody or control of ... all documents relating to State Department recommending covert action made to the National Security Council and its predecessor committees from January 30, 1961 to present."
- "the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody or control of ... all 40 Committee and predecessor Committee records of decisions taken since January 20, 1965 reflecting approvals of covert action projects. [separate subpoena] ... All documents furnished by the Arms Control and Disarmament Agency's Standing Consultative Commission, and the Central Intelligence Agency, the National Security Agency, the Department of Defense, and the Intelligence Community staff, since May, 1972 relating to adherence to the provisions of the Strategic Arms Limitation Treaty of 1972 and the Vladivostok agreement of 1972."

These three subpoenas are the basis of the Committee resolutions of November 14.

The subpoena directed to the Secretary of State requests documents containing the recommendation of State Department officials to former Presidents concerning highly sensitive matters involving foreign intelligence activities of the United States. The appropriate State Department officials identified and referred to the White House documents which apparently fall within the subpoena. None of these documents are from my Administration. These were carefully reviewed and, after I received the opinion of the Attorney General that these documents are of the type for which Executive privilege may appropriately be asserted, I directed Secretary Kissinger not to comply with the subpoena on the grounds of Executive privilege. I made a finding that, in addition to disclosing highly sensitive military and foreign affairs assessments and evaluations, the documents revealed to an unacceptable degree the consultation process involving advice and recommendations to Presidents Kennedy, Johnson and Nixon, made to them directly or to committees composed of their closest aides and counselors. Thus, in declining to comply with the subpoena, Secretary of State Kissinger was acting on my instructions as President of the United States.

With respect to the two subpoenas directed to "...the Assistant to the President for National Security Affairs, or any subordinate officer, official or employee with custody of control...", the really important point here is that the NSC staff has made a major effort to deliver the documents requested. As you know, additional documents were made available to the Committee after the deadline of the subpoenas and indeed after the Committee voted on the November 14th resolutions. There has been and continues to be an effort on the part of the NSC staff to provide the Committee with the information and documentation it needs. In fact, a very comprehensive volume of information has been made available which provides the Committee a substantial basis for its investigation.

This effort was undertaken, notwithstanding the fact that the subpoenas themselves were served on November 7, made returnable only four days later, and called for a broad class of documents, going back in one subpoena to 1965, and in the other to 1972. Substantial efforts were required to search files, identify items covered, and to review them for foreign policy and national security reasons in accordance with procedures which have been previously used with information requested by the Select Committee.

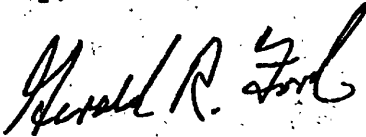
In addition to our efforts to substantially comply with these two subpoenas, I have been advised that there are serious and substantial legal and factual questions as to the basis on which the Committee seeks to find Secretary Kissinger to be in contempt. The subpoenas were directed to "...the Assistant to the President for National Security Affairs, or any subordinate officer..." and were in fact served on the Staff Secretary of the NSC. Secretary Kissinger had no responsibility for responding to these subpoenas nor for supervising the response to them. After November 3, he was no longer my Assistant for National Security Affairs, and he was neither named in the subpoenas nor were they served upon him. Thus there is no basis for the resolutions addressed to Secretary Kissinger on these subpoenas.

In summary, I believe that if the Committee were to reconsider the three resolutions of November 14, it would conclude that my claim of Executive privilege is a proper exercise of my Constitutional right and responsibility. As to the two subpoenas directed to the Assistant for National Security Affairs, they do not involve Secretary Kissinger, and there has been a substantial effort by the NSC staff to provide these documents. Furthermore, they will continue to work with you and your Committee to resolve any remaining problems.

It is my hope that the Select Committee will permit Executive Branch officials to appear at tomorrow's hearing to discuss the points I have raised in this letter.

It is my desire that we continue forward, working together on the foreign intelligence investigation. I believe that the national interest is best served through our cooperation and adoption of a spirit of mutual trust and respect.

Sincerely,



The Honorable Otis G. Pike
Chairman
House Select Committee
on Intelligence
House of Representatives
Washington, D.C. 20515

OWEN S. PERE, N. Y., CHAIRMAN
 ROBERT M. GARRIS, CONN.
 JAMES V. STANTON, OHIO
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 MORGAN P. MURPHY, ILL.
 LES ADAMS, WIS.
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ROBERT MC CLINTY, ILL.
 DAVID C. TRICIN, LA.
 JAMES P. JOHNSON, COLO.
 ROBERT W. HASTEN, AR., WIS.

A. BEARLE FIELD, STAFF DIRECTOR
 AARON S. BOWEN, COUNSEL
 TELEPHONE: (202) 223-5751

Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

November 21, 1975

The President
 White House
 Washington, D. C.

Dear Mr. President:

I thank you for your letter of November 19 addressed to our Committee, and assure you that the issues as to which you voice concern are of equal concern to us.

As you are now aware, in compliance with your request, our Committee yesterday morning did allow representatives of the Executive Branch to discuss the issues raised in your letter throughout our Committee meeting yesterday. While our Committee did thereafter act in such a manner as to keep our options practically viable I share with you the hope that the underlying issues may be resolved.

The additional material made available to the Committee night before last and today go a long way toward resolving our issues on two of the three subpoenas as to which there was concern. The NSC staff is now, as you state, making a real effort to provide the Committee with the information and documentation it needs.

As to the third subpoena on which executive privilege has been asserted, this is obviously the one on which you feel most strongly and it is also obviously the one on which the Committee feels most strongly, our report thereon having been approved yesterday by a bi-partisan 10-3 vote.

You have characterized that subpoena as requesting "documents containing the recommendation of State Department officials to former Presidents concerning highly sensitive matters involving foreign intelligence activities of the United States." The subpoena, in fact, does not request recommendations to Presidents, but requests recommendations to the National Security Council. It is not addressed broadly to foreign intelligence activities, but specifically to covert actions.

It has appeared to our Committee that such operations generated outside of the normal channels have tended to be of higher risk and more questionable legality than those generated by the normal process, and it was largely for that reason that we felt such recommendations necessary for the successful conclusion of our investigation.

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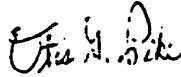
The President
November 21, 1975

Page 2

While we disagree on this issue, I wish you to understand our position on this matter as well as we understand your own.

With best personal regards,

Sincerely,

A handwritten signature in cursive script, appearing to read "Otis G. Pike".

OTIS G. PIKE

OGP:o

THE WHITE HOUSE

WASHINGTON

December 6, 1975

Dear Mr. Chairman:

The President has asked me to reply on his behalf to your thoughtful letter of November 21. He has further asked me to tell you that he appreciates the fact that you and your Committee permitted representatives of the Executive Branch to appear for testimony on November 20, and shares your hope that the remaining "underlying issues" may be removed.


As you know, in order to provide your Committee with the substance of the information it sought to obtain by the November 6 subpoenas, the Executive Branch identified the originating agency with respect to all covert actions conducted from 1965 to the present. The President authorized this step because of his desire to meet the legitimate needs of the Committee for information on covert operations, although such detail was not required under any of the three subpoenas.

As a further demonstration of our desire for accommodation, the President has authorized me to inform you and your Committee that, since the 40 Committee subpoena covered only the period 1965 to the present, we will supplement the information already given to your Committee by providing similar information for the years 1961 through 1964 under the guidelines we have followed thus far. This additional step should, we believe, make it possible for the Committee to obtain the information that your letter indicated was necessary without affecting the President's claim of Executive privilege.

- 2 -

I sincerely hope, Mr. Chairman, that this further example of the President's desire to help the Committee carry out its important responsibilities will receive a favorable response by the Committee.

Sincerely,



Philip W. Buchen
Counsel to the President

The Honorable Otis G. Pike
Chairman
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

**APPENDIX III.—CORRESPONDENCE RELATING TO
CLASSIFIED MATERIAL**

CENTRAL INTELLIGENCE AGENCY

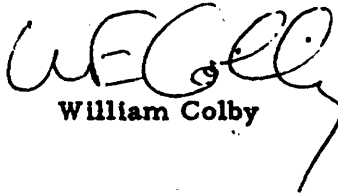
September 29, 1975

Dear Chairman Pike:

Forwarded herewith is material which was unclassified or which has recently been declassified in response to your subpoena of September 12, 1975, with respect to Tet Offensive of 1968.

The remaining material is temporarily withheld pending agreement on procedures with respect to its possible public release. I am prepared to discuss with you the bases for its continued classification provided no public release of it takes place until satisfactory arrangements, as previously discussed, are put into effect.

Sincerely,


William Colby

**The Honorable Otis G. Pike
Chairman
Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515**

TOP SECRET**CENTRAL INTELLIGENCE AGENCY**
WASHINGTON, D.C. 20505

30 September 1975

The Honorable Otis G. Pike, Chairman
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

With the approval of the President, I am forwarding herewith the classified material, additional to the unclassified material forwarded with my letter of 29 September 1975, which is responsive to your subpoena of September 12, 1975. This is forwarded on loan with the understanding that there will be no public disclosure of this classified material (nor of testimony, depositions or interviews concerning it) without a reasonable opportunity for us to consult with respect to it. In the event of disagreement, the matter will be referred to the President. If the President then certifies in writing that the disclosure of the material would be detrimental to the national security of the United States, the matter will not be disclosed by the Committee, except that the Committee would reserve its right to submit the matter to judicial determination.

In some 12 instances in the enclosed classified material, excisions have been made of particularly sensitive matters. In 10 of these instances, they would pinpoint the identity of individuals who would be subject to exposure. In two cases, this would violate an understanding with a foreign government that its cooperation will not be disclosed. In each such case, Mr. Chairman, I am prepared to discuss with you, and the Committee if necessary, the specific basis for this exclusion due to the exceptionally high risk involved, and I am sure that we can come to a mutual understanding with respect to its continued secrecy or a form in which its substance could be made available to the Committee and still give it the high degree of protection it deserves. In case of disagreement, the

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This document may be

downgraded to Unclassified
when enclosure is detached.

HANDLE VIA COMINT CHANNELS
TOP SECRET



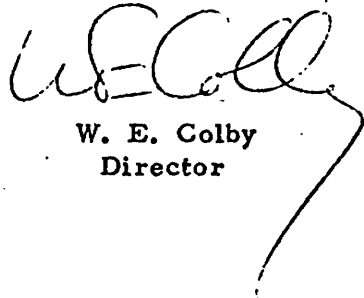
1517

TOP SECRET

- 2 -

matter will be submitted to the President under the procedure outlined above, and the Committee would of course reserve its right to undertake judicial action.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. E. Colby". The signature is fluid and cursive, with a long, sweeping line extending from the bottom right of the name.

W. E. Colby
Director

Enclosures

APPENDIX IV.—LETTER FROM ARCHBISHOP MAKARIOS OF CYPRUS TO PRESIDENT GIZIKIS OF GREECE— JULY 6, 1974

COPY

V. 8 July 74

C Y P R U S

0 1

MAKARIOS BLAMES GREEK OFFICERS FOR SITUATION IN CYPRUS

Nicosia APOGEVMATINI in Greek 6 Jul 74 p 8 M

(Text) This morning President Makarios' letter to General Gizikis was made public. The full text of the letter is as follows:

Mr President:

It is with profound grief that I have to set out to you certain inadmissible situations and events in Cyprus for which I regard the Greek Government as responsible.

Since the clandestine arrival of General Grivas in Cyprus in September 1971, rumors have been circulating and there have been reliable indications that he came to Cyprus at the urging and with the encouragement of certain circles in Athens. In any case, it is certain that from the first days of his arrival here, Grivas came into touch with officers from Greece serving in the National Guard from whom he received help and support in his effort to set up an unlawful organization and allegedly to fight for enosis. And he established the criminal EOKA-B organization, which has become the cause and source of many sufferings for Cyprus. The activity of this organization, which has committed political murders and many other crimes under a patriotic mantle, advancing enosis slogans, is well known. The National Guard, which is staffed and controlled by Greek officers, has from the outset been the main supplier of men and material to EOKA-B, the members and supporters of which gave themselves the nice ringing title of "Enosists" and the "Enosis Camp."

I have many times asked myself why an unlawful and nationally harmful organization which is creating divisions and discords, cleaving rifts in our internal front, and leading the Greek Cypriot people to civil strife, is supported by Greek officers. And I have also many times wondered whether such support has the approval of the Greek Government. I have done a great deal of thinking and made many hypothetical assumptions in order to find a logical reply to my questions. No reply, under any prerequisites and assumptions, could be based on logic. However, the Greek officers' support for EOKA-B constitutes an undeniable reality. The National Guard camps in various areas of the island and nearby sites are smeared with slogans in favor of Grivas and EOKA-B and also with slogans against the Cyprus Government and particularly myself. In the National Guard camps propaganda by Greek officers in favour of EOKA-B is often undisguised. It is also known, and an undeniable fact, that the opposition Cyprus press, which supports the criminal activity of EOKA-B and which has its sources of financing in Athens, receives guidance and line from those in charge of the Second General Staff Office and the branch of the Greek Central Intelligence Service in Cyprus.

- 2 -

It is true that whenever I have complained to the Greek Government about the attitude and conduct of certain officers, I have received the reply that I ought not hesitate to report the officers by name and state the specific charges against them so that they could be recalled from Cyprus. I did this only in one instance. This is an unpleasant task for me. Moreover this evil cannot be remedied in this way. What is important is to uproot and prevent the evil and not merely to face its consequences.

I am sorry to say, Mr President, that the root of the evil is very deep, reaching as far as Athens.

It is from there that the tree of evil, the bitter fruits of which the Greek Cypriot people are tasting today, is being fed and maintained and helped to grow and spread. In order to be absolutely clear, I say that cadres of the military regime of Greece support and direct the activity of the EOKA-B terrorist organization. This also explains the involvement of Greek officers of the National Guard in illegal activities, conspiracy and other inadmissible situations. The guilt of circles of the military regime is proved by documents which were found recently in the possession of leading cadres of EOKA-B. Plenty of money was sent from the National Center for the maintenance of the organization and directives were given concerning the leadership after the death of Grivas and the recall of Major Karousos, who had come to Cyprus with him, and generally everything was directed from Athens. The genuineness of the documents cannot be questioned because those which are typewritten have corrections made by hand and the handwriting of the writer is known. As evidence, I attach one such document.

I have always adhered to the principle and I have on many occasions stated that my cooperation with the Greek Government for the time being is, for me, a national duty. The national interest dictates harmonious and close cooperation between Athens and Nicosia. No matter which Government of Greece has been in power, it has been to me the government of the mother country and I had to cooperate with it. I cannot say that I have a special liking for military regimes, particularly in Greece, the birthplace and cradle of democracy. But even in this case I have not departed from my principle of cooperation. You realize, Mr President, the sad thoughts which have been preoccupying and tormenting me following the ascertainment that men of the Government of Greece are incessantly preparing conspiracies against me and, what is worse, are dividing the Greek Cypriot people and pushing them to catastrophe through civil strife. I have more than once so far felt, and some cases I have almost touched, a hand invisibly extending from Athens and seeking to liquidate my human existence. For the sake of national expediency, however, I kept silent. Even the evil spirit which possessed the three defrocked Cypriot bishops, who have caused a major crisis in the church, emanated from Athens. However, I said nothing in this connection. I am wondering what the object of all this is. I would have continued

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to keep silent about the responsibility and role of the Greek Government in the present drama of Cyprus if I had been the only one to suffer on the scene of the drama. But covering things up and keeping silent is not permissible when the entire Greek Cypriot people are suffering, when Greek officers of the National Guard, at the urging of Athens, support EOKA-B in its criminal activity, which includes political murders and is generally aimed at the dissolution of the state.

Great is the responsibility of the Greek Government in the effort to abolish the status of Cyprus as a state. The Cyprus state should be dissolved only in the event of enosis. However, as long as enosis is not feasible it is imperative that the status of Cyprus as a state be strengthened. By its whole attitude toward the National Guard issue, the Greek Government has been following a policy calculated to abolish the Cyprus state.

A few months ago the National Guard General Staff, consisting of Greek officers, submitted to the Cyprus Government for approval a list of candidates for cadet reserve officers who would attend a special school and then serve as officers during their military service. Some 57 of the candidates on the list submitted were not approved by the Council of Ministers. The General Staff was informed of this in writing. Despite this, following instructions from Athens, the General Staff did not take the decision of the Council of Ministers, which under the law has the absolute right to appoint National Guard officers, at all into account. Acting arbitrarily, the general staff trampled upon laws, showed contempt for the decision of the Cyprus Government and enrolled the candidates who had not been approved in the officers training school.

I regard this attitude of the National Guard General Staff, which is controlled by the Greek Government, as absolutely inadmissible. The National Guard is an organ of the Cyprus state and should be controlled by it and not from Athens. The theory about a common area of defense between Greece and Cyprus has its emotional aspect. In reality, however, the position is different. The National Guard, with its present composition and staffing, has deviated from its aim and has become a hatching place of illegality, a center of conspiracies against the state and a source of supply for EOKA-B. It suffices to say that during the recently stepped up terrorist activity of EOKA-B, National Guard vehicles transported arms and moved members of the organization who were about to be arrested to safety. The absolute responsibility for this improper conduct of the National Guard rests with Greek officers, some of whom are involved up to their necks and participants in the activity of EOKA-B. And the National Center is not free from responsibility in this connection. The Greek Government could, by a mere gesture, put an end to this regrettable situation. The National Center could order the termination of violence and terrorism by EOKA-B because it is from Athens that the organization derives the means for its maintenance and its strength, as confirmed by written evidence and

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proof. The Greek Government, however, has failed to do so. As an indication of the inadmissible situation, I note here in passing that in Athens also slogans were recently written against me and in favor of EOKA-B. On the walls of churches and other buildings, including the building of the Cyprus Embassy. The Greek Government, even though it knew the culprits, did not seek to arrest and punish anybody, thus tolerating propaganda in favor of EOKA-B.

I have a lot to say, Mr President, but I do not think that I should say anymore. In conclusion I convey that the Greek-officered National Guard, the plight of which has shaken the Cypriot people's confidence in it, will be restructured on a new basis. I have reduced military service so that the National Guard ceiling may be reduced and the extent of the evil may be limited. It may be observed that the reduction of the strength of the National Guard due to the shortening of the military service does not render it incapable of carrying out its mission in case of national danger. For reasons which I do not wish to set out here I do not share this view. And I would ask that the officers from Greece staffing the National Guard be recalled. Their remaining in the National Guard and commanding the force would be harmful to relations between Athens and Nicosia. I would, however, be happy if you were to send to Cyprus about 100 officers as instructors and military advisers to help in the reorganization and restructuring of the armed forces of Cyprus. I hope, in the meantime, that instructions have been given to EOKA-B to end its activities, even though, as long as this organization is not definitely dissolved, a new wave of violence and murders cannot be ruled out.

I am sorry, Mr President, that I have found it necessary to say many unpleasant things in order to give a broad outline with the language of open frankness of the long-existing deplorable situation in Cyprus. This is, however, necessitated by the national interest which has always guided all my actions.

I do not desire interruption of my cooperation with the Greek Government. But it should be borne in mind that I am not an appointed prefect or locum tenens of the Greek Government in Cyprus but an elected leader of a large section of Hellenism, and I demand appropriate conduct by the national center toward me.

The content of this letter is not confidential.

With cordial wishes.

**APPENDIX V.—INTERVIEW WITH HON. HENRY J. TASCA,
FORMER UNITED STATES AMBASSADOR TO GREECE,
BY JACK BOOS, COMMITTEE COUNSEL**

**INTERVIEW WITH HENRY J. TASCA
September 26, 1975**

JB: Mr. Ambassador, do you affirm that the statements that you are about to give to the House Select Committee on Intelligence are the truth, the whole truth, and nothing but the truth?

AMB: I do. They are the truth as I see it on the basis of the experience I had and of my memory of what occurred during the period concerned.

JB: Please identify yourself for the record.

AMB: I am former ambassador Henry J. Tasca. I was ambassador to Greece from January 1970 until September of 1974. I have retired from the foreign service as of January 31, 1975, and I am currently engaged in business activities, writing and reading and doing things I've always wanted to do.

JB: Could you briefly outline your career in the foreign service?

AMB: I've been in the career foreign service since 1956, although I've been in the service of the United States Government, I would say, since the war. I served in the United States Navy in the Mediterranean and with the Allied Commission for Italy in the Military Government as financial advisor. I served with the Embassy in Rome as financial advisor and treasurer representative from 1945 to 1948. In 1948 I was alternative executive U.S. Director of the International Monetary Fund and in 1949 I went to Paris with the European Office of Marshall Plan to take charge of all trade and payments. In 1952 I became Deputy U.S. Special Representative in Europe for the Marshall Plan for Economic Affairs, and in 1953 I went to Korea for President Eisenhower as his Special Representative for Economic Affairs in Korea. I had to prepare the first foreign economic plan to support the military effort and the reconstruction of Korea. After that mission was terminated in 1956, I came to Italy in charge of the Marshall Plan as Administrator of Economic Affairs. In 1956 to 1960, I was in Germany as Administrator of Economic Affairs and also in charge of military affairs on the embassy side. I was integrated into the career foreign service in 1956 and was in the career Foreign Service from 1956 until January of this past year. After I left Germany in 1960 I was Deputy Assistant Secretary of State for Africa from 1960 to June, 1965 and then I went to Morocco as Ambassador from 1965 and stayed until October of 1969. I was nominated as Ambassador of Greece in August of 1969 but didn't appear in Greece until January of 1970.

JB: When you reported in 1970, what was your understanding of the U.S. policy toward Cyprus?

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- AMB: The U.S. policy toward Cyprus in 1970 and throughout the years that I was in Greece was that the United States was for an independent sovereign unified Cyprus, and that the United States believed that the proper approach to a resolution to the problem between the Greek Cypriots and the Turkish Cypriots was through the successful conduct of what had been known as the intercommunal talks. These were talks between the two communities in an effort to revise the London-Zurich Agreements in areas where they had proved defective so that they could reach a new modus vivendi. This was our policy at the time. It wasn't very long before I got involved in trying to use whatever influence I could to make clear to the Greeks that this was United States policy and that the United States deplored violence on the Island and thought it was very important for the Greek government in every way possible to support the efforts of Makarios and of the Turks to try to reach an agreement and then talk at that time.
- JB: It is said that at various times from the days of Acheson, the U.S. has floated the idea of double enosis on Cyprus and a partition arrangement of some kind. To your knowledge, was that idea seriously considered by the U.S. during your tenure in Greece?
- AMB: During the period that I was associated with Greece, nobody at any level ever talked about double enosis or partition as a serious possibility, even as a possibility, for a solution to the Cypriot question. It was simply out of the question. And those of us who knew what the Cypriot map looked like, the demographic map, knew that this wouldn't have solved anything at all and that it would raise a lot of problems and cause hardships. So there was never any question at all of that alternative.
- JB: It's been reported as well that high level officials in the State Department perhaps including the Secretary himself, regarded Makarios as an unwholesome element in the area. To Your knowledge, what was our attitude toward Makarios?
- AMB: I want to stress this point at the outset, that whatever I say is going to be from the Athens perception. I had responsibility for Greece, not for Turkey or Cyprus, and therefore I can only give you the optics as I saw these optics from Athens. From what I saw in Athens, I never saw any expression of opinion on the part of the Seventh Floor on the question of Makarios. In the sense that there was the thought that maybe some effort should be made to do without him or to see . . . there was never any talk of this kind at all. I went to visit the Island early in my stay in Greece because I thought it was important to get a first-hand impression of Cyprus. I had a very long and interesting talk with Makarios and my view continued to be that he was a very able man, extremely competent. I understood that some people found him difficult to get along with but he seemed to me like a bona fide leader. I was convinced and remained convinced that

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there was no substitute for Makarios to hold the very delicate balance that existed in Cyprus during these years.

JB: Before you took your post in Athens, there had been no U.S. Ambassador there for several months ...

AMB: Longer than that I believe. I think that Phil Talbott left Greece in January of 1969 and I arrived in January of 1970.

JB: Who carried on in the absence of the Ambassador?

AMB: Well, there was a chargé back there, Mr. McClellan, and the Chief of the Political Section was Mr. Arch Blood who left. So during that entire time period it was in the hands of a chargé d'affaire.

JB: What was the nature of the CIA liaison activities with the Greek Government during this period?

AMB: The CIA did not have liaison activities with the Greek government itself. It had liaison activities with various elements in the Greek structure. I think that would be a more accurate way to put it. I might mention a word about this because I think it's very important to clarify one point here. Which is this: Greece was a very peculiar kind of an Embassy, because it was a military dictatorship. The members of the government were in civilian clothes, but there was back-up power in the military itself. You also had a situation that the intelligence functions of an embassy are carried out on the military side by the defense attache. The overall coordinator of the intelligence embassy activities of an embassy was...I've seen them are generally carried out by the CIA station chief. Which means that the station chief would be coordinating in my embassy the activities of the defense attache. Contacts for the military were made by the defense and by CIA contacts. For example, the contact with a man like Ioannides before I came would already be established. The CIA contacted Ioannides. This is the way it worked out. Now, as far as the embassy is concerned, this meant that in our situation that kind of activity raised an organizational problem which I tried to remedy because the center of an embassy's foreign policy is...generally tends to be the Ambassador, the Deputy Chief of Mission and the political counsel. But here we had a situation where the power was over here on the military side but the government itself was not military, so it led to what is not the normal pattern in an embassy.

JB: Did you have specific knowledge and approval of the activities of the CIA station in Greece?

AMB: Well, as ambassador, all you can do is you have to assume that all the members of your country team are playing a straight game, they're all cooperating with you. Now when you're in the intelligence field I suppose one could envision

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situations where some people aren't playing the game but I can say this truthfully and emphatically that as far as I am concerned, my relationships with my station chiefs were excellent. I thought they were loyal and I had great confidence in my last station chief. I think he was a loyal member of our team, and that's based on my contact with him, a day-to-day contact, and my working with him. I can't say more than that. I had a very good man and I had a good country team. The way I operated my embassy was perhaps somewhat unorthodox. I operated a kind of collegial system. Whatever the problems were, we all sat around in my office. In fact, I had my office enlarged purposely so we could all sit around in my office and not in the conference room. We'd just meet very frequently every week, all of us...sit down and toss the...then the station chief and I did something that is not usually done. I introduced an inspection. In the last year I introduced the military to a much larger extent to these meetings. And I repeat, as far as my recollection of my operation in Greece, I was very satisfied with the cooperation that I got from the CIA, and agency.

JB: It's been reported that at least on one occasion, you had a serious difference of opinion with the previous station chief, Would you care to...

AMB: Well, I don't know what that refers to. There was a press comment in the New York Times to the effect. That's the only one I can think about, that there was a press comment in the New York Times to the effect that he had given a farewell party and that I had thought he had too many political figures and that I walked out on the party. Well, that is a distortion of fact. What happened, in effect, was that he had a farewell party. Mr. [redacted] was very popular and his wife was very popular and knew everybody and they invited a whole lot of people; ministers, military and so on. I did not walk out. I stayed there, that's where I met Ioannides, incidentally. But my thought was, I can say this now, and this was not a difference at all, but my thought was with Potts leaving I did not want my new station chief to get into that position. And I thought that a station chief ought to limit his activities and have a lower profile than he had at that time. But that was my own view, and I think you'd better realize one thing. That when I arrived in Athens, with no Ambassador in Athens, just a chargé and this terribly controversial Greek problem as you know; the embassy was just divided. It was a divided embassy. There were those who were for and those who were against and one of the first things that I had to do was to insist that there was only going to be one U.S. policy and one U.S. voice and we're all going to be on the same team. We could all say anything we wanted at any time within the family but in terms of carrying out policy, we were going to carry out one policy and work together. And the reason why that's important is because this lack of an ambassador for a year did tend to have each of the sections work with their own people and they sort of built up a coterie. For example,

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the chief of the political section. If you went to one of his parties, out of all of the opposition there. On the other hand, the CIA people, they had people ... they had more people from the government side, you see. It was this kind of a thing that I wanted to stop. I did not think that we should have a high profile with the junta. I lowered our profile in many respects and this was one of the things one of the aspects of lowering the profile that I thought was necessary. If you can call that a difference, it really wasn't, I don't consider that a difference. I consider that just a tightening up of the administration after a year of no ambassador.

JB: By 1974, did anyone in the CIA station have access to important Greek government officials where you as ambassador, for example, may not have had similar access?

AMB: Not that I know of, because I wouldn't have tolerated it if I knew about it. And I don't know of any case as far as government people were concerned. They did have access to Ioannides. They had access with Ioannides, and, of course, they had access with the intelligence people. This gets you back to the peculiar situation we had in Greece. For example, a man who was very close to the prime minister was a military fellow, Well now, they'd have a contact with him. But that contact with them naturally gave them a channel for getting things across of their own point of view which could be useful into the so-called civilian channel. But as far as their contacting somebody like Papadopoulos, or anybody in the government, they did not do that and were not supposed to do it.

JB: You never had reason to believe that they might not have reported back to you all their important...

AMB: No, I did not. I did not.

JB: What kind of intelligence information did you routinely report back to the State Department?

AMB: When you say intelligence, you're talking about all kinds of information, political, economic, under a reporting function. Well, under the reporting function, we tried to stimulate and use all the sources we had. I took our administrative counselor who normally would not be in this business at all and since he's a man of Greek origin, spoke very fluent Greek, Mr. Genees, I used to send him off on trips...and talk around with the Greeks and find what they are thinking. Now we'd send it as a political report. Then we had the reporting of the political section that maintained contact for the opposition. My reporting with leaders of the opposition, and with members of the government and occasionally with...I would see some of the top military at various kinds of functions. This is where I used to get my point across on democracy which is one of the things I hit very hard during...whenever I was with the top military.

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I would always go back to the thing that security and democracy go together. That's one part of it. Then, of course, you had the defense attache with his contacts. He would get out his reports on his contacts with the military people that he met. The CIA had a whole series of contacts with people. I used to get their reporting on...these people could be businessmen, they were military people; in other cases, they were people unidentified but in no case as I understood it, whether anybody in the government side was involved I would have known about it. I mean anybody at a policymaking level.

JB: To your knowledge, then, you had access to all reporting back to Washington from the various elements in the embassy.

AMB: Well, I assume that I was given all the reporting that the leaders of my sections thought I should see. The reason I say that is because I was economic counselor, and then I was ambassador. I was treasury man and all of these special parts of the United States government have their offices back in Washington. There is a continuous stream of communication between them, their letters go on all the time between the State Department, the desk officer, and the State Department. The DIA and his people. Now, I would not presume to have seen all that communication but it was my view, and the people I had, still think were loyal and were playing it straight, I assume that anything I had to see they gave to me. Now, I can only tell you the way I saw it.

JB: To whom did you report in the State Department?

AMB: I reported generally, we reported directly to the Secretary of State. The Secretary of State would send it on to the White House, and sometimes I'd write a letter to the desk officer, occasionally to Joe Sisco. But generally I did not write many letters. On the other hand there was a fairly constant stream of communication between, for example, my political counselor and his opposite number in the State Department on administrative matters, sometimes explain some nuances in the reporting on cables or reporting on general dispatcher matters to which they may have been asked to give further information.

JB: So the stream of reporting was directly to the Secretary?

AMB: That's right.

JB: To your knowledge, were any reports sent back with the routing indicating that no one other than the Secretary would see them?

AMB: Well, that's an interesting question, because there I think that with the advent of Secretary Kissinger, there was unquestionably a major change in the distribution and the kind of classification that our message had. Under Secretary Rogers we generally had classifications like SECRET, I don't

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recall ever using TOP SECRET once in Athens. SECRET and sometimes we'd say departmental distribution and, but very rarely would we use these very restrictive classifications of NODIS, EYES ONLY. But there was a very large increase in that when Secretary Kissinger came in as Secretary. He seemed to attach great importance into not having...well, let's put it this way, to attach great importance in having control of the distribution of messages. And so for that reason, the messages were very much restricted. One of the problems for an ambassador you realize. I never felt I was the ambassador to the State Department. I always felt I was Ambassador of the U.S. government and the President, and for that reason I was just as eager to have Schlesinger and the JCS or Colby or any other agency of the United States know as much about what was interesting as the State Department. And so I prefer, frankly, the earlier system.

JB: What sort of information was given the NODIS treatment by the Secretary?

AMB: Prior to the crises, the Secretary did not use NODIS except in rather exceptional circumstances, where he wanted to get a point across on his views regarding the future of the Junta, his attitude toward the Junta, but these were unusual occasions. When the crises came, a very large proportion of all the messages dealing with the crises were put into NODIS which, of course, meant that the distribution was determined at the receiving end by the Secretariat working directly for the Secretary.

JB: How would this work?

AMB: The Secretary would send you a message NODIS saying do this and that and you're expected to reply in NODIS.

JB: I see.

AMB: And if one didn't reply in NODIS we all understood that that would not be following the rules.

JB: So the NODIS designation was not on your own initiative.

AMB: No. No. Very rarely; I'm trying to think if I did any NODIS. Well, it's hard for me to think of when I did. It would be conceivable that there might be situations affecting only the Secretary and only the State Department where the Secretary was asking about a point of view that he wanted from the standpoint of the embassy, so that he could formulate, let's say a departmental position, not a U.S. government position. He might ask. It's hard to define exactly, but the situations were pretty clear. The general thing I want to repeat again, that the Ambassador's interest is in getting the broadest possible consensus for our policy at the highest levels. What does the

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ambassador want most? He wants a clear policy, he wants a consensus, and he wants to be backed up when he carries out the policy. It was important to me that the JCS understand why I was opposed to the U.S. military presenting a high profile of American during the Junta days, because the military were being exploited by Papadopoulos through photographs and television to make it appear that the military supported the Junta. In fact, the military was seeing the Greek government because their business was military business and they hadn't anybody else to keep their profile down. They couldn't do it entirely, but I asked them to realize that they could be exploited. In order to do that properly, it was important for the military to understand what our policy was. For that reason, I was rather keyed on the military getting as much, for example, political reporting as possible, so they could understand what the problem was.

JB: Why would Kissinger want to restrict the dissemination of this reporting?

AMB: Well, I don't know...I just don't know. Why he'd want to do that. I think you could follow the State Department over the last several years, at least as carefully as I have in Washington, and I think that every Secretary of State has his own style of operating. The Secretary of State apparently attaches very great importance to the flow of intelligence and his handling of the flow. And what he does with it after that depends on his decision. I think this is something he thinks is essential in terms of his conduct of foreign policy for the President. I think that answers the question.

JB: So as far as you knew, when something was going back from you on a NODIS basis...

AMB: I never knew where it was going. In fact, as far as I was concerned, it would stop in the office of the Secretary, and nobody else would see it. One of the problems of that, of course, I may add, was where that system would break down. I can't prove that it broke down, but it could have broken down. I would never run an embassy except on a collegial basis; they're all team members and my senior team was with me every day. And there is very rarely a report that ever went to the Secretary in NODIS that my country team didn't see. In fact, they saw everything, because I did not feel that I could run my embassy unless they knew what was going on. How can you carry out a policy and give advice on a policy, give advice on a problem if you don't know the facts? So I proceeded in my entire career on the basis that my top colleagues have got to know what I know. Therefore, even if a message was in NODIS, if it were an important message, my station chief, my political counselor, my DCM, and perhaps my military attache and sometimes the economic office saw the message.

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JB: Would they be at liberty to report the...

AMB: No, they're not supposed to report. As far as I'm concerned that was for their information. It would have been considered not quite the thing to do for them, if I sent a NODIS, to send in a separate message saying the Ambassador sent a NODIS. I don't remember any occasion where they did it.

JB: Who controlled the communications channels...

AMB: In our embassy?

JB: Yes.

AMB: Well, it, the actual communications, was done by the CIA. They had the operations of the communications. But we did have a method there. If we had to send something out, the CIA didn't have to see, we did have an officer to do that too, at least that's the way it was supposed to be. But generally, as you know, CIA is in charge of communications.

JB: What sort of activities was CIA engaged in? During your tenure?

AMB: CIA's major targets are the Communists and the Soviet Union. And their major interest in Greece, I think, was the Communists and the Soviet Union. And so in working with Greek intelligence they tried to do whatever they could to establish cooperation. They would try to do this to get maximum information on what the Soviets were doing to build up the U.S. intelligence picture on the Soviets in Greece and outside of Greece as well.

JB: As far as you know, was covert action of any kind ever contemplated during your tenure in Greece?

AMB: No. No covert action was ever contemplated and never recommended.

JB: Early in 1974, the Greeks and Turks clashed in the Aegean Sea over oil rights...

AMB: They had differences. Major differences. They started from the date the Greeks discovered oil off the island of Thasos. The Turks got very excited and they decided that they ought to have the rights, which was a real problem because the Turks made a lot of allegations about the Greek Islands being on their Continental Shelf. The Greeks said that these Islands had their own territorial waters. My conclusion was that the only way you could settle it was by negotiation, because the geology was such that nothing fit. The private treaty just didn't fit. And so naturally, at that point, my effort in a situation of this kind was to try to improve peaceful relations between Greece and Turkey, try to get them to solve the problem peaceably. Of course with the advent of Ioannides, this wasn't so easy because my impression prior to the advent of the Ioannides-sponsored government was that Papadopoulos had differences with Turkey on Cyprus, but he was very wary

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about tangling with the Turks and he gave high priority to good relations with Turkey. The Ioannides felt quite differently about this. Ioannides had a complex about 400 years of Turkish occupation that, "they did us in and someday we must get even with them." So when this Aegean oil thing came up it came up against two serious problems. One was that you had the power, this unseen power of Ioannides, anti-Turk to an extreme degree and in a rather irrational fashion. The other problem was that the issue came up on oil which made Ioannides feel that this was something that Greece could not yield on without losing face.

JB: Why was Papadopoulos wary of tangling with Turkey?

AMB: I think he was just smarter.

JB: Was it a military consideration?

AMB: I don't know. It wasn't entirely military. I think Papadopoulos liked to think of himself as a statesman, and I think that he realized that any conflict with Turkey would be very detrimental to NATO. He also knew that we would be strongly opposed to anything of that kind, and I think he made up his mind that he was not going to push things in this direction. He was, no question in my mind, a smarter man. He wasn't smart enough, but he was a smarter man than Ioannides.

JB: Did Greece and Turkey ever come close to war in early 1974 on this issue?

AMB: On oil in 1974? They did later on the Cyprus issue. No, I didn't think they were coming close to war. I think that Ioannides was worried about the status of Greek defenses and he did want to order more arms, airplanes, particularly tanks. But I didn't have any impression at all during that period that Greece and Turkey were heading for war.

JB: Were you given messages to dispatch to the leaders of the Greek or Turkish governments during this time?

AMB: I wouldn't be involved with the Turkish government. But as far as the Greek government is concerned, I don't recall what the instructions were, but you know when you've been in Greece as long as I was, it was reflexive. Every time things got up you'd say now no monkey business, that sort of thing, and you made it very clear. I think there's no question in the Ioannides mind about how we felt about it. In fact, Ioannides has just given an interview in Der Spiegel, I think I have a copy. Do you read German?

JB: Better than I read Greek.

AMB: He gave an interview in Der Spiegel very recently in which he tried to take a dig at me because I wasn't one of his favorite guys. This is Der Spiegel of September 15, 1975. Der Spiegel

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asks the question (German text) "What role did the Americans play in the Cyprus crisis?" (More German text).

JB: You'd better translate.

AMB: "Between January and July 1974, we were exposed to much pressure. Above all,...on the part of the ambassador of the United States in Athens at that time, Henry Tasca. He pressured us for Turkish concessions, above all in the question of the Aegean oil, to make concessions of the Turks above in the question of the Aegean oil. And we were also claiming to argue...we were also threatened in a case of a conflict with Turkey we would loose the Aegean Islands. I have nothing further to add at this point of the subject." Well, that's wrong, you see, but the point is it's interesting to see the state of his mind was that the United States was putting pressure on the Greeks to make concessions to the Turks.

JB: Was this incorrect?

AMB: Well, it's wrong because we weren't. I think when...I'll tell you what he's really getting at. I criticized him publicly last May in Washington. I made a speech there. I said he was a horrendous guy and dreadful and that he caused a lot of trouble in conjunction with the coup. This is his way of getting back at me. But it's also his way of getting back at the Americans because he's annoyed with the Americans. He thinks the Americans let him down at the time of the Cyprus crisis. I'll tell you about that later when we get to that.

JB: Did you have occasion to communicate directly with Ioannides on the Aegean oil situation?

AMB: No. I did not. I did not because the matter never got to that point. I dealt with the normal government which is composed of the foreign minister, the prime minister and the president, all three of them. So there's no reason why I should talk to Ioannides who had no official position in the government. Would you like me to talk about the position of Ioannides now? Or later?

JB: Now. What was Ioannides' role at this time?

AMB: At this time, his role was that he had a government, and that it was responsible to him. He would often maintain his contact with his government through younger officers. He kept a low profile. He obviously had his contact with the top generals. But as later was shown during the crisis, when it came to the crunch, the generals refused to obey him.

JB: During this period, would someone like Androutsopoulos, the Prime Minister, have made a major decision without the concurrence of Ioannides?

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AMB: I would doubt very much whether any major decision affecting the security of Greece involving Turkey or Cyprus would be made by Androutsopoulos without his somehow having gotten back to Ioannides. It's very likely that the Androutsopoulos views on something like this would have gone through the military service chiefs, and Ioannides would get his information that way.

JB: Well, is it accurate to infer from this that Ioannides was really running things?

AMB: Well, I think it's pretty clear that Ioannides picked the government that ran Greece. I think it's clear that no major policy decisions were made without Ioannides' approval. I would be less clear to say did he actually try to administer the government; I think in that area the answer would be fuzzy. I think it was an ambiguous situation, in which the government tried to run it's own business but when important policy matters came up, Ioannides in one way or another made his point. So it was not a clear-cut hierarchy. The picture wasn't of Ioannides on top giving orders on every day-to-day decision; this wasn't that symmetrical except for major policy.

JB: The American country team had no direct communications with Ioannides?

AMB: We had direct contact. The CIA is part of the country team and the CIA did have communication with Ioannides.

JB: Through the station chief?

AMB: It was through the station chief. He had his own men who knew Ioannides and who had known him, for example, during the days of the previous station chief. Some had been there quite a number of years and knew Ioannides very well. Afterwards, there was another man who used to work with the station chief who also knew Ioannides and he was the contact with Ioannides.

JB: Was CIA used during the Aegean crisis to deliver messages?

AMB: On the crisis? It's entirely possible. I've been trying to think on this point. I wish I could be more precise. It's entirely possible that I did send one or two messages in writing to Ioannides by the CIA liaison, but...

JB: During what period?

AMB: I'm sorry I don't have the file. But I think it was before the coup, and the thrust of the message was not Aegean oil. The thrust of the message was democracy and getting back to normal constitutional government, because that's something I pressed very hard. It is very clear to me that when Ioannides took over in November of 1973, that that was bad news for the United States. I thought he was incompetent, and he was

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arrogant, and he was likely to get himself into great trouble. And so even at that time, I did everything I could to try to get him to understand that the United States considered that it was very important for the Greeks to get back to constitutional government. But, the probability is I did get one or two written messages to him at that point. Now before I went to Washington -- in March for consultation, you know the question came up of whether I should see Ioannides. And we went over this. These decisions were never made by me. I'm responsible for them, but they were the result of a country team discussion about Ioannides. We did sound out Ioannides on how he would feel about meeting with the ambassador.

JB: How did you do that?

AMB: We did that through the CIA. And the reply we got was that he would not like it. He did not want to deal with Ambassadors. That was the function of the government. One of the things that bothered him particularly as I recall was that any meeting of that kind could very well have gotten out into the public. I told him through CIA that since I might have to appear before the Congress of the United States, Rosenthal wanted to talk to me, if he saw me I could not guarantee at all that I would not be telling the Congress that I had seen him. I had to tell the Congress what the facts were. Well, with all of that, there was never any question about his wanting to see me. He never saw any other ambassador, as far as I know. Now let me hit this thing a little bit more because I want to explain this. There was one incident after the crisis broke. I remember Joe Sisco came...

JB: What crisis?

AMB: The Cyprus crisis. I remember we were sitting in with Androutsopoulos the Prime Minister, and we were going to have a meeting with Joe Sisco and the military. About five minutes before the meeting, Androutsopoulos said Ioannides was coming in. Not as a member of the government now, but as a member of the military; he's just coming in informally. So he rushes in for five minutes to say hello to Joe, and that we better be tough about Turks, they're doing this, that and that. Then he rushed out right away. He refused to see me earlier because that was part of the illusion, that he wasn't running things. So that's another piece of this. I gave you the part of the lack of contact with Ioannides, personal contact, which was the result of the way the intelligence side worked out the MAG and the CIA. Then another factor in my judgment was that we had been very much accused, as you know, the embassy and the ambassador in particular, of being too close to the junta. I remember Wayne Hays saying he saw pictures, which never existed, frankly, of the American Ambassador's arm around Androutsopolos. Anyhow, I was strongly and sharply criticized by a lot of Congressmen for being too cozy with the junta, which I wasn't. This was supposed to be part of the mosaic that was supposed to be true. It was being inspired somewhere, which

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I don't want to go into here. So that was another thing. From the standpoint of the Greek democrats in Greece, they would have taken a dim view if the United States Ambassador had developed relations with Ioannides, even if it had been possible. It would have been considered collaboration with the worst part of the Greek military.

JB: How did you get through to Ioannides during the Cyprus crisis?

AMB: When the crisis was about to break, before the invasion... Tom Boyatt prepared a message which he sent to the embassy. It said, "We think you ought now to go to Ioannides personally and do this. Tell him." We sent a message back pointing out all the things I just pointed out to you. Saying "you'd better review this because of these factors; we still think it's inadvisable to force this at this time. He may create damage in other areas: We have clear evidence in an earlier meeting with one other contact that he could have gotten very tempermental, very nervous and very angry with the United States about our general attitude on Cyprus. He was getting our message from his government." Now, Tom gets this and he doesn't agree, which is fine.

JB: Doesn't agree with what?

AMB: With what we said. With my message, which was a country team message on my responsibility. So, he prepared a message to come back to us as I understand this, which says "go ahead anyhow." Which is a normal diplomatic practice. Normal State Department practice is that the department will say to the ambassador, let's do this. Now if the ambassador agrees, he does. If he doesn't, it's a sound practice for him to say "do you really want to do this; you better think of this before we go ahead and do it." Then the Department says "we follow that, go ahead; or, you're right, don't go ahead." Now this is important. My having done this, Tom sent a message up to Sisco. Sisco has it on his desk, early in July. I was in Switzerland, my son was about to graduate from le Rolle School. During that time, Elizabeth Brown was charge, and Joe Sisco called up Elizabeth Brown and said "I have a message here. How do you feel about this thing, does the country team still feel the same way? And Elizabeth said "yes, we do." Sisco said "All right, fine. We won't send any message to Ioannides." So Joe made the final decision.

JB: Not to send any message...

AMB: Well, yes, he had in his desk...

JB: At all.

AMB: Yes, I didn't make it, he made it. So when the story came out in Newsweek that I had not carried out the order, that was wrong, completely wrong. This was a department decision based on all the information. Joe Sisco decided that we wouldn't go ahead and

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approach Ioannides; that would have involved my forcing an appointment if he would have accepted. He still might not have seen me prior to the coup in July 15.

JB: Were you asked to see anyone else?

AMB: No, I was not asked to see anyone else. It was not necessary to see anyone else because I had already hit this point very hard with the foreign minister, with the prime minister and with the president. They all accepted that in Washington. There was no question about that, and this is an old standing policy of ours. In 1972 we had a similar crisis when Papadopoulos got annoyed with Makarios because of the strength of the communist party in Cyprus and because of the communist training and because of his accepting arms from Eastern Europe. Papadopoulos wanted to try to force Makarios to bring the Communist influence under control in Cyprus and cut it down to size. They were going to get into a big conflict. It got in and I talked to Papadopoulos that was early in the morning, and I made a very strong statement about not getting involved. That stopped the whole business at that point. So this for four years, it's like a record, if you talked to any of my country team, no violence, successful communal talks, unified independent Cyprus. That's been the theme song for four years.

JB: The New York Times has reported that on or about June 20, 1974, a CIA man met in Athens with Ioannides who informed the CIA man that he was thinking of some kind of military action against Makarios' government on Cyprus. Do you have any information on this?

AMB: When I was in Greece I heard a similar report in Athens which came out as a kind of gossip. We had been hearing this for four years in Greece. I remember specifically asking my station chief about this very story. He denied emphatically that anybody had come from Washington, that a had some. I had no reason to doubt that as far as my station chief was concerned that this was true.

JB: As far as you know, Ioannides met with neither a CIA man from outside nor inside the station. Ioannides didn't tell anyone connected with CIA, even indirectly?

AMB: Let me put it this way. If there had been any meeting of this kind neither I nor my station chief knew anything about it. I certainly didn't and I'm certain that my station chief didn't... I had full confidence in his integrity.

JB: During this period did you have any indication from Ioannides or any of the Greek hierarchy that some kind of action against Makarios was contemplated?

AMB: That's a hard question to answer because this question of violence against Makarios was an endemic question over four years. It flared up and at various times there were reported

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attempts of assassination. Then things would die down and come up again. This was a very controversial period for Makarios. And so in a strategic sense, if anybody came to you and said "well you know they are planning to move against Makarios", if you were sitting in Athens that wouldn't make much of an impression...We had been hearing that for four years and nothing ever happened. So from that standpoint I would say there was no reason to believe that action against Makarios was imminent. On the other hand, if you look at the period from January to the coup in July 15, especially after the death of Grivas, as I predicted in my report, turned out be more of a steady element rather than a destructive one. At his passing, EOKA-B lost his steadying hand for good or evil and it became divided, more violent and there was a rise in the level of violence in Cyprus. Then you recall there was a period under which the EOKA-B's -- certainly Ioannides must have been involved in this -- tried to destool Makarios and that failed. Now this increase in violence really began to worry Makarios and toward the end of that period this is where the message came in that I talked to the prime minister, the foreign minister and the military, passing the word on to Ioannides through CIA. You still couldn't judge on the basis of past experience that anything was going to happen at a particular time if at all. Now perhaps the most significant thing in a way, even Ioannides mentions that in the interview I referred to, was that on July 3, Makarios did a rather strange thing which was unlike Makarios. Makarios was an able and shrewd leader. On July 3, he issued a letter to the Greek government which he made public, asking the Greeks to remove all military that were directly assigned from the Greek army from the Island. Ioannides took that as a great insult to the Greek army and it's very likely that, as Ioannides seems to say in his interview, this was one of the factors that made him decide to move. Now to show you our attitude on this, we realized how tricky this was but there wasn't really anything we could do at that particular point in time. The final decision on further intervention, as indicated earlier was made by Sisco and the Department. To show you our own state of mind on this, when the coup really took place, we didn't expect it. I was down with my family down at the Greek Classical Theater (Epidavros) and I was awakened about 5:30 in the morning by a staff aide that Makarios had been ousted and at that time the report was that he had been killed. So I had a helicopter come down and fly me back to Athens and get my country team together. From that time on we went into a deep stage of concentration and that lasted until the day I left Greece. But there is nothing in that background which would have made one feel that something was imminent and that they made a decision. Another important point to remember is that during the week after Makarios fell, I was told by the foreign minister and the prime minister solemnly -- we got the word from CIA, too -- Makarios is gone but Sampson is not our man; he's not going to stay; we have given orders to the Greeks on the island to be very nice to the Turks, so the Turks will not feel threatened. And this is the way that week went.

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JB: What was the basis of Tom Boyatt's assessment of what was about to happen?

AMB: My optics and my perception are based on my sitting in Athens. It is based on the intelligence that I get, what I know. Tom Boyatt's is based on Greece, Cyprus and Turkey. Now, in some cases this is the way it works. I can't explain this. In some cases an ambassador gets more or less intelligence. In fact, one of the things an ambassador worries about as you can expect is, is he getting all the information you should have? I always felt for example, and I don't know what the reason is, maybe it wasn't there, but I felt I would have been happier if I had more intelligence out of Turkey. I always felt I wasn't getting what I ought to get and we weren't getting what we were getting on Greece. Could be it just wasn't there since, I want to stress again, I was looking from an Athens perception.

JB: Did you ask anyone to...

AMB: Several times I said, "gee, can't we get more information out of Turkey?" But nothing really very much ever happened.

JB: Whom did you ask for more intelligence on Turkey?

AMB: I'd ask my station chief to check with Washington. Tom had broader access to the intelligence than I had. Now that's the way it works and he would get a whole lot of things on Cyprus, being Cyprus office director, that I wouldn't see at all. This is one of those questions of how much you keep one country informed on what's going on in another country.

JB: Did you normally assign a high value to his assessments?

AMB: Well, we knew Tom very well and we knew how he felt about Cyprus. I respected him and his views. On the other hand, he was office director for Cyprus and I was Ambassador to Greece and it was quite possible, and this is what happened in fact, that his perception wasn't my perception. He saw the Greek situation as a somewhat different situation than I did, sitting as an Ambassador in Athens. So I would say that our evaluations would probably be different only in one sense. I think we both attached importance to Makarios; we both attached importance to a unified, sovereign Cyprus, I as much as he did. He felt that the Greeks had more control over Cyprus than I saw in the four years I was there. I am speaking of the pre-Cyprus situation. We both felt Makarios was a very important factor of his own, that Papadopoulos and even later, Ioannides had to be careful because Makarios did have a strong position of his own, over the years he was able to defend himself successfully. Then the only difference between us was in fact what he thought was major. I assume that the way he reacted later, but to me was not a major difference. In the sense of my own appraisal it wasn't worth while going to Ioannides directly. That is something I had to judge because I was in charge of the Greek

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situation for the United States as far as...But even I wasn't the last word; it was Joe Sisco who finally had to make that decision. What I am saying is, in terms of appraising of what was good for Greece, my judgment was better than his. But as between Boyatt and me somebody above us had to decide.

JB: I want to separate two elements here. First, whether something was imminent in Cyprus; secondly, whether an approach could be made directly to Ioannides. What was your judgment on the...

AMB: You're talking about before...

JB: Before the coup...

AMB: I repeat what I said. As far as we were concerned we did not have any tactical warnings. There was no tactical warnings as against the strategic ones I indicated earlier. There were bad relations between Ioannides and the Cypriot government, but there were no tactical warnings that would indicate that a decision was made. The CIA and my contacts did not come to me with a report saying "as far as we now know that Ioannides appears to be planning to move against Makarios." If that had happened...if my station chief had come to me with a report to that effect, as far as I am concerned, we would have had a different ball game.

JB: As far as you knew, Boyatt was the only one who sent alarm bells...

AMB: That's right. Exactly. In other words, if I had a report... the kind of person I am as I showed in '72 when I really raised hell with Papadopoulos on Cyprus...if I had a report that was a reliable report that Ioannides seemed about to move I would have turned the place upsidedown. I did later... when the generals decided to go to war. I considered myself a signal factor they did not go to war with Turkey.

JB: I want to be clear on why you thought that Boyatt's assessment was incorrect.

AMB: I did not see his assessment of a tactical warning because he had nothing...there is no information I had in anything that Boyatt had drafted that said "Ioannides is about to move tomorrow and our information says he is going to do it and so do this." All we got from the Boyatt telegram was the kind of thing we have been getting for a long time from Boyatt... "gee, it's terrible... do something about it." In other words the level of decibels of the Boyatt position on Greece and Cyprus was not much higher at the time of the crisis than it was before.

JB: He provided no additional facts.

AMB: No, he did not.

JB: Would it have been the normal practice to respond in return asking for any additional information?

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AMB: No, it would not, because the assumption is they are sending you all the information that they have. And if you have a telegram signed Kissinger, it is not signed Boyatt, you don't go back to Kissinger and say on what do you base your statement. You can do that and I would but it did not seem warranted here because there was nothing in the telegram. As far as the country team was concerned they all shared my view on it.

JB: Based on the Boyatt assessment, Sisco thought it advisable that someone contact Ioannides...I take it he later backed off?

AMB: Yes, that is one way of putting it. Yes, you could say that... There was first an instruction that came in. Then we made our comments and he accepted them without giving any further instructions to go ahead. That was his final decision.

JB: I assume during this whole period you were in contact with the appointed officials of the Greek government.

AMB: Yes, almost daily.

JB: And the Cyprus situation would have been discussed regularly?

AMB: I spoke of it repeatedly. Even though the instructions didn't come through, there is no question in a situation like that you automatically take every opportunity you get and your country team does the same thing in their contact. You stress the point "no violence"; "there is no other solution." "We take a very dim view of any action to disturb the present situation." That is just standard.

JB: So during this period you had no indication that anyone in the Greek government in a responsible position had sounded out your country team on what the U.S. reaction would likely be, or hinted that military action was imminent?

AMB: No, I had no information at all like that.

JB: When Sisco suggested a contact with Ioannides, what was the message he wanted to be delivered?

AMB: He finally decided on no further message at that point.

JB: What message did he want delivered in the first place?

AMB: Boyatt? Well, the message really didn't say anything new. All the message said was 'we would take a very dim view of any violence in Cyprus.' That's as old as the hills; we had been saying that for four years. There was nothing else beyond that. That was the thing.

JB: Given that Ioannides was the kind of man you knew him to be, would a repetition of that message have kept him from doing something he wanted to do?

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- AMB: If that did not, nothing else would. If he was not willing to abide by or take into account the fact that the American Ambassador was well known in the Greek government to take a very strong view opposing a Greek adventure in Cyprus, I don't think any other approach would have had different results.
- JB: Would Ioannides have reason to believe that perhaps Washington may have taken a different view than yourself?
- AMB: I don't know. I can't answer that question. I assume he shouldn't have any reason to believe there was a different point of view in Washington...I don't know.
- JB: You are quite sure that to your knowledge no CIA people were sounded out by Ioannides or tipped off in some way?
- AMB: Well, as far as I know, no. You must realize that when you are in charge of a big embassy and if you have station officers contacting people all the time, what they talk about you don't know. I have no way of giving any assurance of what my offices in the embassy were talking about when they talk in their day-to-day contacts. But as far as I know nobody did that.
- JB: Well, as your position against a Greek adventure in Cyprus was presumably well known in Washington, would it have been possible for anyone in Washington to send a contrary message to the station without your knowledge?
- AMB: Well, of course, it would be possible, because I don't have control of the communications. The Ambassador does not control communications. You would have to be sitting there seeing what is coming into that embassy both in the pouch, orally and by telegram and a series of telegrams. The ambassador cannot control that. You have no control over that...in the final analysis the only thing that's going to make this system work is when in Washington at top level they all agree on how it ought to work. I mean all levels...in the Presidency, the National Security Council...decide this is what our policy is going to be and decide on what you're getting. If they don't operate that way...it is diplomatic history...this wouldn't be the first time...I hope you don't think I'm naive enough that there aren't situations where things are done without an Ambassador knowing about it. It is even possible that those situations may be the way, from a national standpoint, a matter ought to be handled...so it's entirely possible that the ambassador doesn't know about it. But the...all that I can say is when you get into the situation where somebody did something the Ambassador didn't know about, it was presumably done on high level authority, presumably with the agreement of the President, the National Security Council and the people who are authorized to make that kind of decision.
- JB: Who are the CIA employees who were used to convey information to Ioannides?

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AMB: That was handled through the Station Chief, and I am sure he had a number of people who knew Ioannides. Some of them had worked with Ioannides. would have the names.

JB: How was it possible that the Greek military wouldn't have had the information that Ioannides was about to move on Cyprus?

AMB: Because the Greek military would have no responsibility for intelligence in Cyprus. All the intelligence operations were completely and firmly in the hands of Ioannides. Secondly, in his contacts with the EOKA-B, there was no chain of military command from the Greek military. They had nothing to do with it, so there is no reason why there should be any communications. Thirdly, G2 reports that were made from Cyprus didn't have any of this kind of thing in it... There was ordinary military stuff... interesting in a general way but nothing of this sort relating to the EOKA-B opponents of Makarios.

JB: What kind of reporting were you getting from Cyprus at the time before the coup?

AMB: As I recall the reporting from Cyprus, there was no indication that I saw that provided what I would call a tactical alarm. It was pretty much the same kind of thing we had been getting: violence on the island, the stress and strains between the EOKA-B and Makarios, the problems with Lyssarides and his paramilitary forces... But there was nothing at all that would make me say "gee, this is hot stuff - you better find out more about it." And when I say we, I mean my whole staff. We were all watching it.

JB: Would there have been any overt communication between Ioannides and the coup leaders, before the coup?

AMB: Well, there must have been some communication because Ioannides says himself in this interview in Der Spiegel that one of his decisive factors in the coup was the July 3rd letter that Makarios wrote removing all of the Greek officers. Somehow when that letter was made public there must have been a communication from Ioannides to his leadership at the EOKA-B in Cyprus, to move against Makarios. We had no information on that one at all.

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JB: Did we have a SIGINT capacity at this time?

AMB: Yes, I assume we did. We were very well covered in that area but it could well be he did it by hand. He wouldn't necessarily do it by telegraph or phone. He wouldn't have to do it that way but it would be very unlikely any message like that would get through without our knowing about it.

JB: We are told the Turkish Cypriots may have had advance warning of the coup.

AMB: I have nothing on that.

JB: We have also been given a hypothesis that the Turks may have not only expected the coup but had an understanding with Ioannides about the demise of Makarios and some kind of partition coming out of it.

AMB: It's very unlikely because I don't think Ioannides would have ever gone for partition. He didn't like the Turks that much at all and no Greek nationalist would ever think of giving up any part of Cyprus to Turkey. On the other hand, they had one thing in common: they both detested Makarios. The Turks detested Makarios. There is nothing ~~they would like better than seeing Makarios leave.~~ They didn't want Sampson; they wanted Clerides to take over. This is a good point to stress because it hasn't been stressed so far. It's not the fall of Makarios that can be used as the justification of the Turks invasion, because they were glad to see him get out of the place. They said it was Sampson and so on...but that's another story of whether they were in good faith or bad faith. I personally think that there was a good bit of bad faith on the part of Turkey in the whole operation. I think the Turks were preparing the invasion before the fall of Makarios. Makarios fell on July 15th...don't tell me you can launch 25,000 men, airplanes, ships and tanks in 3 or 4 days...you can't do that.

JB: What would the Turks have used as a pretext?

AMB: Well, the government was deteriorating and...well, Ioannides says for what it's worth in this interview that the Turks had delivered an ultimatum to Greece...that if they didn't agree on oil, Turkey was going to impose a unilateral solution on Cyprus...at least that's the implication of it.

JB: In Cyprus?

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AMB: Let me read that interview and be sure of that. Ioannides: "The hard point of the crisis was reached at the beginning of June 1974 at the time of the NATO conference in Brussels when the prime ministers of Greece and Turkey met. At this meeting the Turks issued an ultimatum regarding an immediate settlement on the basis of the Turkish conception of what a settlement ought to be. Differences in Thrace where there is a Turkish minority, the Aegean and Cyprus were in question." That is all one sentence but you get the meaning. "Otherwise they (the Turks) threatened that they would intervene independently. At the same time Turks strengthened their striking forces and began mobilizing troops on the coast opposite the Greek islands."

JB: Were you aware of these developments at the time?

AMB: We are aware of the meetings. I tell you the way this came out. The meeting in Brussels did not come out this way. The meeting in Brussels came out in a different way. The reports that we got said that the prime ministers had met and the Turks said let's set up a joint ministerial committee to go over all these problems and try to settle them. We thought and I thought that was a reasonable proposal. Ioannides through the government spokesman said to me why that was outrageous to sit down with the Turks. To do something like that was equivalent to admitting that there was a problem in these areas and they refused to accept the Turkish versions. Therefore they refused to do it. That is one point. On the mobilization of their troops on the coast -- on the Turkish coast opposite Cyprus -- there were reports from time to time that the Turks had certain units in standby status to move if necessary into Cyprus situation and intervene. That went on for several months. I never saw anything toward the end, that I recall, coming out of Turkey which said the status of readiness had increased. From my standpoint, this is a gap, which normally I wouldn't have asked about because I wouldn't have gotten the problem in this form. If they said the government says they are about to invade, well -- but it didn't come up to me in that form at all. But it is likely that the intelligence getting to Washington from Turkey probably indicated -- it had to indicate -- that there was a mobilization or increased activity in that area because, as I indicated, they couldn't have launched this invasion so quickly after July 15th if they hadn't prepared it before.

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JB: But this information did not get to you?

AMB: No, I did not get that information. At least I don't recall having seen it.

JB: The official post mortem done by the intelligence community on the Cyprus event indicated that some blame Secretary Hartman and others for withholding information from responsible people.

AMB: That's a very difficult problem. It gets back into the manner in which the State Department operates under Kissinger and the approach that Kissinger has in the flow of information and intelligence to various official levels of the department and other departments concerned. I do not think it is a healthy way to operate because in all of my experience, I have found that senior levels of our government are composed of loyal citizens trying to help the United States. I prefer to trust my colleagues and give them the information and get better returns from them rather than fear that there might be security leaks and keep information from getting where it ought to get. It's my own personal judgment that there is just as great a danger of damage to the country in the people making decisions not having all the available information as in the possibility of any leak to the press. That happens to be part of my philosophy of government, and I believe this.

JB: Who was Tom Boyatt's counterpart?

AMB: That was George Churchill. And, of course, you know that both George Churchill and Tom Boyatt were both removed from their jobs at the outbreak of the crisis. A complete, new team was constituted.

JB: Why was this done at that critical moment?

AMB: Well, I don't understand it, because frankly, the normal practice at that time was to keep all the experienced persons working. Tom and I had differences, but he is a very serious foreign service officer. George Churchill is a first rate officer. He and Rodger Davies did a great job back-stopping for me. I couldn't have survived in Greece four years.

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It was the toughest assignment I ever had in my life if I hadn't had such marvelous superb backstopping as I got from Roger Davies and George Churchill. George knew Greece and it was a big mistake to take him off Greece. Now the Secretary also decided to change me..he wanted to change the Ambassador.I got the word on August 12th and I was given two weeks to get home to talk about a new assignment. My view at that time was that that was a mistake. I knew the Greek military and knew the Greek government very well. I knew the democrats and had made strong contact with them. They all considered me their friend and when they heard I was going to leave, sent an official message to the United States government asking that I stay because he thought it would be very helpful for me to stay on. After the first Cyprus ceasefire, on July 24, Kissinger sent me a very laudatory message about the great job we'd done and my great leadership and so on. And so I don't understand why there was this feeling that we had to have all new people. In my case it could have been that some of the Congressmen like Congressman Hays thought I was friendlier with Papadopoulos than I was. And one of the press reports was that Congressman Hays had called up Kissinger and asked that I be transferred because of my relationship with the junta. But still, Henry Kissinger knew that and the Greek democrats wanted me to stay, because I had worked for democracy for four years and they knew it. I have a letter right in this office from the head of the opposition, the internal opposition, on my performance in Greece. I want to mention this here because it's a part of that whole scene. I don't understand why we didn't keep the people that we had working on the problem. I had made the point to the Secretary. I said, "Well, Mr. Secretary, in view of the crisis and in view of my knowledge, wouldn't it be better if I stayed until the crisis was settled or at least in a position where we could safeguard our interest more effectively?" That was turned down; for some reason they thought they wanted to make a change. But here is a letter dated September 2nd signed by Kannelopoulos who was the top leader of the resistance in Greece to the junta. And the letter says: "Dear Mr. Ambassador, I should like to express my regrets for being unable to attend your farewell reception. May I take this opportunity to tell you how constructive I found our meetings in the tragic days of the dictatorship. I realize how delicate your position was and I sincerely believe that you were personally trying to do your best given the circumstances under which you were holding your post." So, that's part of this picture; somehow, for some reason, Kissinger did not want to use people who worked on Greece. And even after I got back to Washington, in October, I was never asked at any stage for my views on Greece or Cyprus or Turkey until I retired in January of this year.

JB: Kissinger proposed to remove you before the second invasion?

A: That's right, that was just before the second Turkish thrust.

JB: Did you infer from that that Kissinger believed that the crisis was over?

A: Well, he knew it wasn't over. I know I did not infer that. It was very clear from the messages that were going back and forth that the crisis wasn't over by any means. The new Greek democracy was very concerned about it. They were very concerned that the

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United States did not make a greater effort to stop the Turks and they were under the impression the United States was not making a great effort. It was very hard to dissuade them.

JB: Was it correct that the U.S. did not do enough to prevent the Turkish invasion?

A: Well, I have publicly stated, and I'll state here for the Committee, that from my perception in Athens I thought we should have done more to stop the Turks. After the invasion I recommended that the United States take a firm position with Turkey along the lines that President Johnson did in 1964, that we interpose the Sixth Fleet, not for combat, but to show the flag. We should have also interrupted military aid. We never interrupted military aid one minute. There was never any stoppage of military aid to Turkey in spite of what I considered to be aggression. I could be wrong, because I didn't get all the intelligence, but my own view is that the Turks never really believed that the United States was really serious about the use of American supplied military equipment in an aggression against what was really part of the Greek nation and involving another NATO ally. That's my view and I've stated it publicly and I'll say it again to the Committee. Repeating again that this was my Athens optic. I thought the Turks would be very annoyed if we took the firmest stand, but I always recognized that the fallout would be less than if we did what we were doing. Which seemed to me to be to try to bring about a ceasefire without restraining the Turks. After the violation of the first ceasefire, the Kissinger ceasefire, I would have thought that the Secretary would have been most upset. If I had been Secretary of State at that point and I had just announced a ceasefire and the Turkish military continued to move, violating the ceasefire, that would have been cause for the strongest action on the part of the United States. Our credibility was involved. Unfortunately the military continued to move and from my optic I never saw any strong action on our part to stop it, and the military kept on moving until they took 40% of the island.

JB: Why didn't we rebuke the Turks at that point?

A: Well I can't answer that, because that's a matter of overall policy. Remember when you're Secretary of State, President of the United States, Athens is one piece of it, and he's got to reconcile all of the interests involved. This is what he thought was in the best U.S. interest. It would be improper on my part to say that that was right or that was wrong. All I can say is, from my optic and my experience as a diplomat, and as a former professor of international relations, it just seemed to me that we could've made a stronger effort to make Ecevit understand that this was a very, very dangerous game that he and the Turkish military were engaged in and that it was something that we would have to take drastic action on. And the two things that we could have done were to stop military aid immediately and put the Sixth Fleet out--not to fight the Turks--but to evacuate the American citizens on the island that were in danger--it would've made the point. Now maybe even that wouldn't have worked, but, still, we would've made it.

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Then the other thing we should've done was to have pressed the British, who had primary responsibility as signatories of the London-Zurich agreements and had primary rights of intervention. In the Treaty of Guarantee, the British, the Greeks and the Turks have the right of intervention, for one purpose--to restore the status quo whenever the unity, the sovereignty and the independence of Cyprus is threatened. The British didn't intervene, the Turks intervened to destroy that guarantee. They didn't carry out the guarantee. Now with that background, the British didn't carry out their responsibility. We didn't, from my optic, take a stronger position on that. I repeat again that this is the way it seemed from Athens. The Secretary of State has to take the overall view, but that's the way it looked from where I was. The Turkish military, I think, changed their objective--first they got clobbered by the Greeks, then they saw . . .

JB: Clobbered?

A: Well, they didn't have the territory they wanted to get, so they kept on moving. When they got a piece of the territory, everybody thought that they'd be satisfied with it. Then they changed their objectives again; they decided to go for the 40%. It was just a pretty outrageous performance, on the basis of any set of criteria. Especially when the United States put its own leadership and credibility on the line. And since that time, there's been no give at all in the Turks' position, and don't forget that the military aid flowed into Turkey until February of this year. And during that whole period of military aid, there was no give on the part of the Turks, in terms of trying to reach any kind of a settlement. So, anybody who thinks that the resumption of military aid is going to now make the Turks flexible, I think is making a big mistake.

JB: To your knowledge, were there intelligence indications at the time of the negotiations, that despite Kissinger's efforts, and the ceasefire, that the Turks would keep going anyway?

A: Well it wasn't a question of intelligence; they were just doing it. You didn't have to wait for the intelligence; they kept on moving. There was only one period there when they stopped for a short while, after the first Geneva meeting. Aside from that, they were always moving, so you didn't need any intelligence, you would be getting reports of bombing, and fighting, and so on from the island.

JB: Do you find here that the key event as a pretext for the Turkish invasion was not the removal of Makarios, but the installation of Sampson as President?

A: Well, it couldn't have been any more than a pretext, because Joe Sisco was there and Ioannides through the government had said that they were quite willing to see Sampson go. Joe was negotiating the removal of Sampson and putting Clerides in his place; he was completely acceptable to the Turks. The Turks went to England on a Thursday of that week, the week of July 15th, to go through a very pro forma consultation on the London-Zurich pact which they had to do to intervene, and then they intervened and that was the end of it. So, I think it's really not quite accurate to say it was even a pretext, I think the Turks had decided on the military

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solution very likely before the fall of Makarios, and that once Makarios had fallen, they saw it as a golden opportunity with a weak Greek government, to move in and do something that they wanted to do for a long time--which was to build a real foothold on Cyprus.

JB: What events on Cyprus, before the coup, led the Turks to plan an intervention in any case?

A: Well, there was nothing happening to the Turks--nobody was touching the Turks at all--it was very quiet. The only people who were knocking each other out were the Greeks. As far as I recall, there wasn't one single report of one Turkish hair being disturbed during that period of July 15th--not one.

JB: So why would the Turks want to go in at that moment?

A: Well, I think they saw that the Greek government was falling. I think they saw this as their big opportunity to settle the issue. At least, that's the way it looked to me.

JB: How was Sampson selected?

A: What I heard was that the coup was ordered, and the Ionnides in effect had not really thought through too much about who should run things after. This wouldn't surprise me. But when the coup had started, Sampson somehow had established himself in Cyprus in a position of leadership. There was a report, for whatever it's worth, that Ionnides himself was not too happy about Sampson and would've been pleased to have seen him replaced by somebody else.

JB: Was Clerides consulted before the coup?

A: Oh, I wouldn't think so. You mean by Ionnides? I wouldn't think so, because at that stage, Clerides had nothing to do with Ionnides. He would've been, at least nominally, in the Makarios camp.

JB: Apparently our Turkish intelligence people were unaware that the Turks were planning an invasion of Cyprus.

A: I can't answer that.

JB: You had no indication . . .

A: Let's just put it this way, I did not see any indication, but that doesn't mean that there wasn't any. That gets into the question of what intelligence there was, and how was it distributed.

JB: Do you have any reason to believe that during this period your superiors in the State Department withheld information from you?

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A: No, I didn't have any feeling of that kind. The one thing that I regretted, being very frank about it, was that never during that period did I get one word of instruction as to what our policy was. I mean, it would've been helpful to me at that time, if I'd had instructions saying "our policy is A, B, C, and D, and let's carry it out". So I assumed that throughout the entire period that our policy was to continue to try to apply the principles of London-Zurich, restore the integrity and sovereignty and unity of Cyprus and so on. Frankly, I was somewhat puzzled myself, but it could be just having been in the heat of that tremendous crisis. But, without policy being what it was, to support the independent sovereign union of Cyprus, I couldn't understand why we weren't taking a stronger position with the government of Turkey. That doesn't necessarily mean that we weren't doing it; it just means that I didn't know what we were doing.

JB: What was the quality of intelligence reporting after the coup?

A: Well, I didn't see any change particularly in the reporting because at that stage we were dealing with pretty clear events that were taking place. I mean, there was Sampson and there was the Turks, and there was Joe Sisco, trying to take the heat out of this picture.

JB: Well, were you given to expect the Turkish invasion when it occurred?

A: Frankly, I was convinced that with Joe Sisco coming over that there would be no Turkish invasion, because I never thought for a minute that with a representative of the Secretary, and presumably the President, coming over to talk to the British, the Greeks, and the Turks, the Turks would ever dare to launch an invasion while the mission was still in process. And this is what happened. Joe Sisco's mission was in process when the Turks launched the military invasion. The representative of the Secretary of State and the President of the United States was there and it was a very astounding event as far as I'm concerned.

JB: Was Sisco surprised?

A: Well, you're asking me a very subjective question. I think he was disappointed, let's put it that way. But I think on the eve of the invasion, he felt it was very unlikely that the Turks could be held. That's the impression I got from him.

JB: What about the second invasion? Did we expect that as well?

A: I saw nothing that indicated that we expected it.

JB: Were we caught napping?

A: Well, I don't draw any conclusions from it, except that it's part of the same pattern. Which is my own belief that we should have been firmer with the Turks. I know all this talk about how difficult they are, how proud they are, and all of that kind of business, but can you run a foreign policy based on your subjective analysis of what other people's emotional reaction is

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to U.S. policies that are formulated in the interests of the United States after careful consideration?

JB: So, there was no U.S. outcry as far as you know when the ceasefire was violated?

A: No, I wouldn't put it as strongly as that. But I'd say that, sitting where I was, in Athens, I just felt that the Turks were committing one outrage after the other and that these outrages should be treated as outrages. Because after all, there was the Kissinger ceasefire. Here we had a meeting of the foreign ministers and the Turks move ahead and they occupy 40% of the island after an ultimatum to the Greek government saying either you agree on our terms or we're going to move. Now maybe there was a secret U.S. communication to Ecevit or to the Turkish military which might be primarily responsible for what happened, taking a very indignant view about matters. But I didn't see anything of that kind and if there had been anything of that kind it would have been awfully useful for me to have told the Greek government that that was the way we were reacting. But it could have been done. Maybe for some reason Secretary Kissinger didn't want the Greeks to know how he was handling the Turks for his own tactical reasons in dealing with the problem.

JB: During the time you were in Greece, there were a couple of assassination attempts against Makarios, were there not?

A: Yes, there were.

JB: Did we know about those beforehand?

A: There was one early one that we were supposed to know something about and we told Makarios, we warned him about it. That was when he made his visit to, I think, to Ethiopia, or East Africa. And then there were several other instances, and I don't know what we did at that stage. Actually, that's Cyprus and that would be something that would be handled by the Ambassador down there and the station chief there. I'm not aware of any other cases. But you know, Makarios, strangely enough, wasn't always quite as sensitive to these as other people thought he ought to be. For example, it's a very interesting story when Rodger Davies went to see him, when he first arrived as our ambassador to Cyprus. I'm glad this came up. I'd forgotten this point. But when Rodger had a talk with him and one of the questions he raised with Makarios was 'are you worried about anything?' Makarios said, 'no'. And Rodger says 'if we can do anything for you, let us know about it. We want to be helpful.' Makarios said, 'well, I'm happy to know that but there's nothing we want you to do.' Now this was another thing that went into our computer, so to speak, in Embassy Athens, and into our reaction to the Boyatt thing, because Makarios himself wasn't concerned.

JB: Was his intelligence good?

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A: Well, I don't know. He didn't have poor intelligence. I think it could have been very good. I don't know why he said that if he were really worried. Yet you could argue that strategically he should have been concerned because there had been a lot of violence and they had tried to destool him. I use 'destool' because it's a good Ghanaian word from my African days. But, he had an opportunity to say to Rodger Davies, 'Gee, I don't like the way things are going in Greece and I wish you'd get to your government and tell the Greeks.' Of course, there's another interpretation of this. Thinking out loud now. . . being a Greek, a real Greek in the centuries old tradition of Greek nationalists Makarios may have felt that he wanted to deal with this himself and didn't want the United States government to get involved in it. It could be that, but I rather suspect that if he really got into a tough situation where he thought the United States could be helpful, he'd be likely to enlist us. But it would also have been counter-productive for him with the Greeks if he had done that. I'm trying to give you this broad picture. But Rodger Davies, who was very keenly aware of this whole problem, then took the position that as far as he was concerned there was nothing further that we needed do. I mean he wasn't urging Tom Boyatt's position.

JB: It seems much like the Mideast war. The Israelis gave us assurances too.

A: Yes.

JB: Did we identify the perpetrators of the assassination attempts, the helicopter incident?

A: I never saw any information on that. I don't recall, let's put it that way. That was a long time ago, but if we warned Makarios we must have had something pretty solid, because generally we would never do it. As the ambassador I'd never recommend saying to any head of state "you might get assassinated" unless I was awfully, awfully sure of my facts.

JB: Did you ever have occasion to do that?

A: No, I never did.

JB: How was the military reporting at the Athens station during the pre-coup period?

A: The military reporting was all right. It never was good as I would have liked it to have been, but this is normal. An Ambassador is never satisfied with his intelligence. And the trouble with intelligence is, you get an awful lot of information that's useful in terms of background. But one of the great problems is getting tactically useful intelligence. That is, being able to analyze a situation and coming up with an evaluation that says, 'this is what's going to happen.' Not saying 'well, it looks like this. . . he's angry about that and he's angry about that and he doesn't like Makarios and he's just made some noise against him.' But, trying to motivate that and put it all together in a mosaic in terms of concrete action. . . where you can do something about it, this is what has been lacking. I have also felt that,

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when I was in Greece, that the way we divided up our military. . . I've been always opposed to the two missions, a defense attache mission and the MAAG mission, one of which involved intelligence and one of which does not. I recommended, and it was not accepted, that we have one military mission that would do everything. Why? Because in a case like Greece where the military is so important some of the most important contacts can't be handled by the Defense Attache; he just can't do it. After all, a Defense Attache is only a colonel, where as, our generals that are running the MAAG hobnob with the four star generals or three star generals, I mean, they really are where the thinking is going on. They used to be instructed by the Pentagon before they came out, 'don't get involved in politics.' And so as a result there you were sort of out in left field. Now what happens in that case is the CIA takes on a large part of the intelligence function, which in my view has advantages, but it also has its disadvantage of not having the military contact. Sometimes that kind of information is likely to be more bonafide than something that's coming up through very seasoned intelligence channels where both sides know each other, know the game. You see what I'm talking about? And so, one of the recommendations that I would make is to take a hard look at how you deal with intelligence where the military runs the country. Because the Embassy gets into a very distorted position in its organization, they're not organized for it. The military, the Pentagon is not organized for it, and so, willy nilly, the whole thing goes into intelligence channels that sometimes involve military people on one hand and civilians on the other. And this was the picture that I faced.

JB: As far as you know, there was no U.S. Government connection with EOKA-B?

A: I don't know about anything in Cyprus between our intelligence CIA and EOKA-B. I don't know what that was. There must have been some connection there, because occasionally we would get reports about what EOKA-B was doing in Cyprus. What they were thinking about. So there must have been some contacts. . . In fact, there were, as I think it out, some contacts between EOKA-B and our own intelligence people in Cyprus. But all I would get on that would be what they would send us.

JB: Well, could that merely mean that they had penetrated EOKA-B?

A: It could mean that. It could mean that exactly. I don't know how CIA got its information.

JB: Were you in Greece at the time of the death of Ambassador Davies?

A: Yes, I was. And in fact, we had an intelligence report at that time out of Constantinople. I don't recall the evaluation of it. EOKA-B had a big debate on whether Ambassador Tasca or Davies should be the guy that got it. And the whole business was very sad because Rodger was a great friend of mine.

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JB: Do we know who did it?

A: Well, there was a report. I think there was a mob with some EOKA-B people in it. Well, they actually got names. They were even going to have a trial there. I don't know what happened after that. I just wasn't informed. I want to come back to one point I didn't mention which I want to get into the record. When the Turks invaded, on a Saturday, I was called by the President of Greece who said Greece was going out of NATO. They were going to establish independence and he was given to understand that the Greeks were going to announce the annexation of Cyprus. This was after the invasion. After the invasion, which of course would have meant war. That's what it would have meant.

JB: This was at what point?

A: This was after the invasion. Before the ceasefire, before the Greek government fell. The government faded away on a Monday, this was Saturday. And I took a very strong stand and then I met on Sunday with the military and I took a very, very strong stand against anything of this kind. We later got an intelligence report from the top military that my position had been a key factor in their deciding not to go to war at that point. I wanted to mention that because I think it's important in showing the state of mind, the reaction there was in Greece. This finally led to the fall of Ioannides because Ioannides wanted to go to war and then the generals separated from him and wouldn't obey him anymore. He suddenly found himself without the command channel.

JB: Were we aware before you were told by the President of Greece that something like this was in mind?

A: No, I hadn't heard anything about it. I'd heard nothing about it. It was a big surprise. He summoned me to his office at 11:00 in the morning and I didn't know anything about it.

JB: Again, neither you nor anyone, as far as you know, in the station had contact with Ioannides, his representative or members of the Greek government in which they had sounded us out about our attitude toward a coup or hinted that a coup was coming?

A: No. I had no knowledge of anything like that.

JB: And, similarly, Secretary Sisco backed off as far as a direct approach to Ioannides to warn against a Cyprus adventure?

A: That's correct.

JB: We then let the matter drop?

A: That's correct.

JB: Because we didn't have any hard information aside from the Boyatt memo?

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A: From the Embassy standpoint, yes. But whether or not that was the entire motivation in Washington I don't know. I can't answer that. I would assume that the major factors were the points that we made in our telegram to the Department.

JB: Were other intelligence services active in this area? The British, for example?

A: British, yes. The British have a very well-established service, as I understand it, in Greece and in the area. Our relations with them, though, are not close at all in Greece. We have our responsibility and they have theirs. I do not think that at the local level there was any intense cooperation. I mean, it was not something that they would consult on at the local level. They might consult in London or in Washington.

JB: In any case did we get information from the British or any other service that a Cyprus coup was coming?

A: Not at that time. I don't recall having seen anything from the British at that time, but every so often we'd get their analysis on one fellow or another.

JB: Did you get it from Washington?

A: We would get it from Washington.

JB: On a NODIS basis?

A: No, it would come through regular channels. CIA would show it to me. Our station chief. He might show it to the political counselor or DCM and that was about as far as that would go.

JB: Is there anything else you would like to add to the record at this point?

A: There's nothing really to add beyond what I have said except to say that there is a problem in how you operate Embassies and how you operate intelligence in these countries that have dictatorships, especially when the military play a very strong role. I would like to underline the importance of more intelligence, better intelligence and good distribution of intelligence. I believe that senior officers at the responsible position ought to know the facts so they can give the best advice and make the best analyses.

JB: Subsequent to our initial contact with you about making a statement to the Committee, were you contacted in any way by the State Department or another agency of the United States government?

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A: No, I have not been contacted by the United States government in any way.

JB: Were you given to understand, when you left the State Department, that you were not to discuss your experiences with Congressional committees?

A: No, I was not told that. Of course, you are supposed to hand in all the documents and papers you have, which is duly done, but I was not told that. If I'd been told that I wouldn't have accepted it, because I would consider that quite an improper instruction. My duties as an American citizen require me to keep the Congress informed.

JB: We'll end this portion of the interview now.

Part Two. Saturday, September 27, 1975

JB: Can you further explain Secretary Kissinger's removing you from Athens just at the height of the crisis?

A: Frankly, this is difficult to explain. I realize that having served in Greece for over four years, there was change in regime, and it was normal practice to change the Ambassador. In my view it would have made better sense from the standpoint of the United States, particularly in view of my excellent and good relationships with the new government, for me to have remained in Greece during the remainder of the critical period ahead. I was frankly rather surprised because toward the latter part of July I'd received a message from the Secretary which read as follows: "It is a tribute to the quality of your leadership and that of your staff that I received full support from your mission since the beginning of the Cyprus crisis. We are not out of the woods yet, but you and your staff can justly be proud of the important role you played in convincing the Greek authorities to agree to a ceasefire." Another point of importance in this context is that and the new Greek democratic government had specifically requested the United States government to have me remain as Ambassador during the period ahead because of the excellent rapport that I had developed with them during the years of the junta and their feeling that my understanding of the Greek situation presented the best opportunity of finding some answers to the terrible problems raised by the Turkish invasion of Cyprus.

JB: Do you gather that Secretary Kissinger found fault with your performance in some way?

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A: This is very unlikely because at a later date, on September 2nd, I received a very warm letter from President Ford thanking me for the great contributions that I had made to the United States in serving as Ambassador in Greece. Then as late as March of this year, Mr. Kissinger in a letter to Mr. Christopher, the former mayor of San Francisco, referred to my performance as that of a "superb diplomat" during my tour in Greece.

JB: Didn't Assistant Secretary of State Hartman come to Greece in August, 1974? What was the reason for his visit?

A: Yes, he did come. Originally the foreign minister of the new democratic Greece, George Mavros wanted to go to Washington. But Secretary Kissinger didn't feel he could receive him and as a countersuggestion he informed him that he would be sending Assistant Secretary of State Hartman to Greece and that if foreign Secretary Mavros at that point still thought he wished to see Secretary Kissinger that that could be arranged. Of course, the timing left a lot to be desired because a meeting in Geneva was to take place on a Friday and the timing was such that if Mavros saw Hartman in Athens, it was very unlikely he could get to Washington before the opening of the meeting in Geneva at which he was to be a representative of Greece. I think Hartman was trying to find out just what the Greek government was thinking about and how they saw the future evolution of the Cyprus problem. It will be recalled that at the time of this visit, the Turkish military forces were expanding their beachhead in Cyprus and moving toward the occupation of a very large part of northern Cyprus.

- Naturally, therefore, the great interest of -- as Prime Minister and of Mavros as Foreign Minister was who was going to stop the Turks and this military advance. They considered it vital that the United States make every effort to stop the military movements immediately. It was seriously compromising the whole future of Cyprus and very seriously embarrassing the new Greek democratic government. Mr. Hartman on the other hand seemed to be interested in primarily two points. One of which was that he thought it was important in the interests of the future settlement of Cyprus that Archbishop Makarios did not return to Cyprus. He made a strong point on this issue both to George Mavros and to

- The second point he seemed to be interested in was what were the Greek views on where they saw the settlement finally coming out and what kind of agreement the Greek and the Turkish Cypriots could reach in order to develop a relationship on the island which would make it possible for the two peoples to live peacefully together.

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JB: Why do you suppose the United States did not want Makarios to return?

A: I don't know, but I suppose the feeling was that Makarios was a very well recognized Greek nationalist. That he would be the strongest possible proponent of Greek Cypriot rights on the island and that it would not be possible with his presence there to make any agreement which in effect would deprive the Greek Cypriots of any major share..or let's say, the just share of the island, based on their population and demographic position in any final settlement. Makarios is a great Greek nationalist in his own right and I suppose that it was felt that he would be a barrier to further negotiations at that time.

JB: Well, what did Hartman and Kissinger expect Mavros and a new Greek government to do about this?

A: Well, there's no question in the world but that George Mavros must have informed the Archbishop immediately of this U.S. position and very likely the Prime Minister did the same thing. Because they did know each other very well and George Mavros had been in contact with the Archbishop over a fairly long period of time. So that this clearly must have gotten back to the Archbishop quickly.

JB: To your knowledge, was this policy against Makarios' return based on some kind of intelligence that the Turks would act accordingly?

A: I don't know. I can't answer that except to repeat what I said earlier that the Turks did not like the Archbishop. They must have been very pleased with his demise because they considered him a very strong Greek nationalist as far as Cyprus was concerned.

JB: Well, to your knowledge, what did Mavros and the other Greek presen infer from Hartman's message? What did they think the United States wanted them to do about Makarios?

A: Well neither could possibly have acted in any sense in this direction without getting into very grave trouble in Greece itself, because the Archbishop and the Cypriot cause was very strongly supported by the new democratic forces in Greece.

JB: Hartman was unprepared to talk about the military situation....?

A: That is correct.

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JB: Did he, to your knowledge, cable back to Washington for instructions on how to deal with the Greeks on this problem?

A: I am not aware of any message of that kind.

JB: Stanley Karnow has reported that Kissinger instructed you specifically to stay out of Greek internal politics about this time. Do you recall an instruction like that?

A: Well this goes back to a basic situation that developed with the arrival of Ioannides in the government. I think it is well known that Henry Kissinger feels very strongly about getting involved in the internal affairs of other countries. In his testimony for confirmation, this fact comes out very clearly. When he was questioned about how he felt about certain types of regimes and I think it came out pretty clearly that while he personally felt that he'd like to see democracy, he did not feel that the United States should do very much about it or could do very much. Now my original terms of reference in Greece when Secretary of State Rogers was Secretary, was that I was supposed to safeguard our security interests and also to do everything I could to promote a return to democracy in Greece. I took both of these very seriously and I think the record will show that from the time I got there that I made every effort I could to get the Greeks to come back to democracy. In fact, I can now confirm that Popadopoulos sent President Nixon a letter in 1970 saying that he would return to democracy on schedule which at that time would have been early in 1971. President Nixon replied in a letter, he said that he was pleased that Popadopoulos was going to return to democracy because this was important.

JB: Of course, Popadopoulos didn't make good on this.

A: Popadopoulos didn't make good on this and as I indicated to you earlier, one of the main reasons but not the only reason, was that Ioannides had gotten very active at the end of 1970 in trying to make it clear on behalf of the younger officers he represented that they would not tolerate an early return to democracy nor restoration of monarchy in Greece. This represented naturally, to the United States government, and to me particularly as Ambassador, a great disappointment. When Kissinger became Secretary of State I got the impression that he was going to stress more than ever, the non-intervention aspect of our policy in Greece. On the other hand, with Ioannides taking control of power in November 1973, it became very clear headed for a very serious difficulties because I had no confidence

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that Ioannides would be able to manage Greek affairs or manage his security relations with the United States or that he would want to encourage in any way a return to parliamentary government. I repeat, my view was that our security interests had become so closely linked with the decay and the rot that set in to the Junta, that it became an urgent question for me to proceed to exercise all the influence that we had to promote the return of democracy to protect our security interests. Aside from the fact that the objective in itself was a highly desirable one in terms of our own tradition and beliefs and our principles of foreign policy.

JB: Were your views well known by the Secretary?

A: Secretary Kissinger knew my views; and the government knew them, and the JCS knew them and this matter came up again during my consultation in March. Secretary Kissinger was there and all the top officers of the Department of State and I made a strong plea at that time for our being active on the return of democratic front. I again got the impression that there was some reluctance, that this could interfere with our relationships with the existing government. That's the way it remained. Now when this crisis came, after the ceasefire, I took the view that this was very serious. The Greeks were going to go to war and I wanted the President to know that. I transmitted a personal message to the President and also for information purposes to SAC in Europe in his capacity as Commander of the U.S. forces as we usually did on any message of importance to the military in Europe. We usually gave them the same thing. Not for any action of any kind. Obviously, they'd go through the JCS generally. But to keep them informed. And I think Secretary Kissinger was, partly because of Presidential pressure, a little bit concerned that my messages were strong and he thought I was perhaps worrying too much about day-to-day things that were going on in Greece. That I should take a longer point of view on what was going on. But I saw the thing as a real crisis and saw the place falling apart. It was not good news for Secretary Kissinger but as I saw it as the truth and this represented the view of my top country team. Everybody was unanimous that we were facing a very serious crisis. The Greeks were threatening to go to war and after that they were threatening to tear Greece out of NATO. So that's the reason I took the position I did and in that sense, I'd say that there probably was a difference between me and Kissinger. It's probably the difference from a guy at the battle front and the guy at headquarters.

JB: Karnow also reported that there was a pro-Ioannides bias in reporting from some segment of the country team in Athens.

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A: That is most unlikely because none of us thought highly of Ioannides. In fact, Ioannides had succeeded in doing a most remarkable thing. Up until Ioannides came to power, the relationship between the U.S. military and the Greek military was excellent. When he came to power he quickly proceeded to louse up these relations and create doubt in the minds of the American military as to where he really wanted to go. Ioannides got the impression when he came in that Greece was doing a great deal more for the United States than we were doing for them and he felt we ought to pay for that. That we ought to give them an aid program. I took the position that the most stupid thing that he could do would be try to get into an accounting of who was doing what for whom. Because if he did that and we put down all that we were doing for them, maybe they'd owe us money. I cited the nuclear umbrella, nuclear tactical force, on Sixth Fleet, our reserve forces earmarked and based in the United States, plus our general obligation to go to war if necessary in the event of any Warsaw Pact attack. And he had actually given us a 24-hour ultimatum saying if you don't come up with a military aid program, we're going to close out your facilities. Well, with the line I took,

I think we got him out of that song and dance, because the top military just refused to go along with him. But what I'm saying is that this is indicative of the kind of relationship we had with Ioannides. It was not a good relationship. He'd gotten in a very weak government, very inefficient and incompetent, on foreign policy; he seemed to be very naive in taking the kinds of positions that could only lead to disaster. So that is not true. Nobody on my country team was sympathetic. Now, I'm talking about my country team, I'm not talking about anybody else. I want to stress that point.

JB: Does Ioannides speak English?

A: No, he does not. The only time I ever talked to him, back in 1972, he used an interpreter.

JB: How did the country team communicate with him?

A: Well, we had Greek-speaking contacts.

JB: Among the CIA people?

A: Oh yes, fluent Greek speakers.

JB: How good was our penetration of the Greek military and government? At this time? Immediately prior to the coup?

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A: That's a good question, because it raises a very important overall policy question on how you organize intelligence activities. I think that we had the key contacts where they counted. But the question is, when the key contacts are also the key officers of the government or forces you're dealing with and you have relationships established over a long period of time, how valuable are those contacts when you get into a crisis that involves basically a U.S. point of view different from that of their bosses. You see my point? Even before I left Greece, I thought over the last few years that there may well be something to the notion, in terms of intelligence evaluation, that you can have contacts too long, that they're not as reliable as you think, that they can work both ways. Therefore, it's a very important imperative that there be a reevaluation of your long-standing, so-called reliable contacts, when you're dealing with a highly critical area.

JB: Did we penetrate Ioannides' entourage?

A: Well, we knew people who worked with him. I would doubt, if you take the hard liners around him, that there were any that you could say would be responsive to us in a critical situation. I think in a critical situation they would have clammed up and they would have become the complete instruments of a man like Ioannides.

JB: The intelligence community's post-mortem indicated that Ioannides told one of our sources about a week before the coup that he had changed his mind and decided not to go in. Are you familiar with that report, or with a similar message by indirect means?

A: I never saw that. Never saw the report at all. I'm rather interested in the thought that there was a report like that that I never saw. That could mean that our Station Chief did not give it a high valuation. It could mean that.

JB: Were you informed of Sisco's conversations in his shuttle diplomacy before the second invasion?

A: I was not informed about what he actually achieved in Turkey. I don't know what he did in Turkey. Of course, I was present with him here during the meetings with the Greeks, but the impression I got from his meetings in Turkey was that they failed, that the Turks were not responsive at all.

JB: But you did not routinely get information on all Sisco's discussions?

A: No, I did not. Of course, it's such a long time ago, but I don't recall having seen the copies of his reporting to the Secretary from Ankara.

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JB: Why wouldn't you have gotten them?

A: Well, I don't know. I suppose this must have been the result of the Secretary's modus operandi and, as I say, every Secretary has his own way of operating. This was his style.

JB: Did Mr. Macomber in Turkey receive information on talks with the Greeks?

A: Well, we sent him all the critical things of any significance to them. In fact, just to be sure that he understood how critical it was, I recall having called him up on the telephone and over the open line. I did it deliberately so that the Turkish interceptors would hear it. I said to him, 'Bill, when are you going to stop this aggression. It's outrageous.' So there was never any question in his mind about how we stood on this thing. But the messages that I saw that Bill sent in of his meetings were frankly definitely in a lower key than my messages. Maybe that's the way they should have been.

JB: What do you mean, in a lower key?

A: Well, they weren't as concerned as I was. I was much more concerned about where this was all going to lead. The reason for that was I was sitting in Greece through all the changes.

JB: Did you have reason to believe that Macomber was not giving you every piece of information he had?

A: Well, I'm sure that I did not get all of his reporting. Macomber probably sat there and tried to figure out what was useful to me and what wasn't useful. I can't answer your question. I did get some reporting on his conversations with Ecevit, for example. I got a number of those. But how much of the total picture I got, I don't know. Because I haven't seen the total picture.

JB: You indicated before that we had pretty good SIGINT operations.

A: In the area.

JB: Did you have regular access to those reports?

A: Well, I'm supposed to have regular access and I assume that anything that was of any interest would be brought to my attention. But I can only assume that because, to answer the question decisively, I would really have to know what was being sent in. I assume that as I was the American Ambassador to Greece, the Department and everybody else concerned would want me to be informed so that I could give my best advice. So, I would say I would rest on the point that I would assume they were sending me the information they thought I should have.

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JB: Who would have provided that information to you?

A: Well, I would get that normally through the CIA. They would send it in to me in their reporting.

JB: As it was developed?

A: That would come through the CIA.

JB: What specific knowledge did you have of Kissinger's activities between the first and the second invasion?

A: I did know that he was very actively on the phone with the British Foreign Secretary. I was not informed on the results of the telephone conversations or on what was going on between the United States and the British, but I knew from a diplomatic colleague that these conversations were taking place.

JB: You didn't learn of this from Kissinger but from a colleague in another embassy?

A: That's correct. Again, if Kissinger wants to operate the Department that way, that's up to him.

JB: Before and immediately after the coup, what conversations or correspondence did you have with Mr. Boyatt, Mr. Sisco, and Mr. Hartman?

A: If you ever went through my files, you'll find that I have the reputation, and it's a fact, of very full reporting. I don't tend to use letters. I tend to put things in my telegram. So my whole telegraphic traffic was frequent and very full at that time. Both in terms of facts, of analysis, and of recommendations.

JB: As far as you know, did we have a contingency plan for some kind of hostilities between Greece and Turkey?

A: I don't know of any such plans. There may be on the military side, but I don't know about it.

JB: Do you know a man, Sophocles Iliades? He has been described as a businessman who is supposed to have funded EOKA-B in part and also some Cyprus newspapers.

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A: I don't recall his name. The man whose name I used to hear in connection with EOKA-B was a man by the name of Potomanus. He was supposed to have been involved in the financing of EOKA-B but I don't recall having heard of any others. That doesn't mean he wasn't doing it, but I just don't recall it.

JB: In the period immediately before the coup did you have regular access to cables from our station on Cyprus back to Washington?

A: Well, I was getting a number of reports from Cyprus. Whether that was the complete series or not, I don't know. But we were getting reports from Cyprus. We actually got better reporting from Cyprus not better reporting, but more reporting, from Cyprus than we did from Turkey.

JB: Why was that?

A: I don't know. I just can't answer that, because I don't know what the position in Turkey was.

JB: Was this reporting just an ad hoc thing because of the crisis or was it institutionalized?

A: No, I think the reporting of our Cyprus generally has been fuller and more complete, from my standpoint, than from Turkey. The reporting out of Turkey was just thin for my entire period as Ambassador.

JB: Across the board?

A: Yes, it was just thin. You just never got much out of Turkey.

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JB: You made reference to the fact that Ioannides seemed to feel that the United States let him down in some way in the Cyprus coup.

A: I didn't mean to say that. I don't think that Ioannides felt that the United States had let him down in the Cyprus coup in the sense that he came to us and said that "You let us down." What I really was saying was that I'm completely convinced that he knew that I as Ambassador was very strongly opposed to any coup of that kind. In that sense he also knew that I was out of sympathy with the hard line that he had taken throughout the years on democracy. I rather suspect that he did not feel that I was an element friendly to the kinds of things that he wanted to do and the kinds of things he believed in.

JB: Well presumably Ioannides was aware that Secretary Kissinger did not regard Makarios highly.

A: I don't know that he knew that before the coup.

JB: Wasn't that an open secret?

A: Well, it could have been but it never came across my line of vision.

JB: So as far as you know, you have no reason to infer that Ioannides might have felt the United States would wink at his adventure in Cyprus?

A: Well, that's an important question. Let me think about that. I have seen no indication that Ioannides thought that the Ambassador of the embassy would wink. There was only one item that I saw sometime in the spring which I never understood. There was an item to the effect that Ioannides was reported to have said to one of his colleagues, as I remember, this that he wasn't concerned about the United States.

JB: In what context?

A: Well, it was not a specific reference to Cyprus. It implied everything was all right as far as the United States and he were concerned. And I recall having called my Station Chief when I read that and I said to him: "Stacy, this is funny. How can he say this when we have all these problems?" And Stacey said: "Well, I don't know." We just couldn't figure it out and we dropped it at that point.

JB: What was the source of your report?

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A: It was a CIA report from a contact with Ioannides. I'll repeat again, I had great confidence in my Station Chief. Neither one of us thought anything of it. We just passed it aside. We couldn't explain why he would say that. And I still don't know why he said that because I've seen nothing after that that would have supported that point.

JB: So no one has ever indicated to you in the aftermath of the coup that the Greeks expected that we would go along with the removal of Makarios?

A: Well, all I can say on that is, after the fall of Makarios that became a matter of the way Washington handled it, and our relationships with Cyprus and with Sampson. There was no indication at that time that the United States was taking any moves whatever to try to restore Archbishop Makarios.

JB: So in a sense did we go along with the Ioannides effort?

A: Well, we went along with it in the sense that the United States decided at that point that the Archbishop was out, and that the question was one of dealing with the new group coming in. This was one of the things that Joe Sisco was supposed to deal with when he came over to Europe on his mission which ties in to the replacement of Sampson by Mr. Clerides.

JB: This was what Secretary Hartman was conveying to Mavros after the coup?

A: That the United States thought it would not be helpful at all for the Archbishop to return.

JB: Is it possible that someone might have told Ioannides before the coup that we thought that Makarios, while still on the island, was an obstacle to the solution of the Cyprus problem?

A: I have no indication of that kind . . . none.

JB: The intelligence community post mortem reports that some of our intelligence assets including the SIGINT were apparently turned off after the first invasion. Do you know of anything about that?

A: No, I never heard that.

JB: Did you discern a slackening in our effort after the first invasion?

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A: Well, there could have been and I wouldn't have noticed it because we were just in the heat of a whole lot of activity and of course the government was really beginning to fall apart. So I couldn't answer that question.

JB: You indicate that you were routinely given the SIGINT...

A: Yeah, that's right but what I mean is that I don't have specific impressions in my mind that there was a drop off at that point. Materials were coming in but we were really on a 24 hour day operation at that time. Whatever came in we looked at and I just couldn't answer the question of whether there was more or less.

JB: How good was the SIGINT? Did we ever pick up anything interesting?

A: Very rarely. I very rarely saw anything where I'd say "Gee, this is really something." I would say that I can't remember a critical situation where I really got the kind of intelligence that I wanted.

JB: Was that because there was nothing there to pick up?

A: I just don't know. In a strategic sense, I'd say we got a good flow of information on what was going on in Greece. If there was any gap at all, it was at the tactical point of where somebody was about to move.

JB: Did we know by the way that Ioannides was going to remove Papadopoulos in November 1973?

A: No.

JB: We were surprised by that as well?

A: Except we had heard over a long period of months that a certain military group that I assume was headed by Ioannides were getting increasingly restive about Papadopoulos because of the alleged corruption around him. And also they got very annoyed when he declared a republic and went ahead with the referendum, and decided he was going to bring back some distorted form of democracy under Markezinis. It was the Markezinis experiment that really was decisive. At a given point, Ioannides made pretty clear he did not want Papadopoulos to go ahead with the referendum and when Papadopoulos went ahead anyhow with this peculiar form of democracy there was a real confrontation. It seemed to me that Papadopoulos was going to run into a lot of trouble. So he decided to move Ioannides out of Athens. Well, that seemed to me to indicate pretty clearly in the strategic sense again that sooner or later there was going to be a big showdown. We really didn't know what it was going to come to.

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